2011-2012 Annual Report

Saskatchewan
Information and
Privacy Commissioner

Saskatchewan
Information and Privacy
Commissioner

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June 25, 2012

Hon. D. D'Autremont
Speaker of the Legislative Assembly
129 Legislative Building
Regina, Saskatchewan
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Dear Mr. Speaker:

I have the honour to present to the Legislative Assembly my 2011-2012 Annual Report in accordance with the provisions of section 62(1) of *The Freedom of Information and Protection of Privacy Act,* section 52(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* and section 60(1) of *The Health Information Protection Act.*

Respectfully submitted,

R. Gary Dickson, Q.C.
Saskatchewan Information and Privacy Commissioner

Thank you, Mr. Speaker, I'm pleased today to rise to move second reading of The Freedom of Information and Protection of Privacy Act. This Bill is part of the government's legislative package democratic reforms. It will ensure that the Government of Saskatchewan continues to operate in the climate of openness and accountability....

This Bill, Mr. Speaker, is consistent with legislation in other Canadian jurisdictions. I am confident that it will effectively balance the public right to information and personal right of individual privacy.

The Bill has been introduced in the spirit of open government that we have been told by Consensus Saskatchewan and others that the people of Saskatchewan desire. The Act will make available much government information that has historically not been available in Saskatchewan.

Hon. Mr. Lane—Hansard April 22, 1991, p. 2700

The Act's basic purpose reflects a general philosophy of full disclosure unless information is exempted under clearly delineated statutory language. There are specific exemptions from disclosure set forth in the Act, but these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act.... The Act's broad provisions for disclosure, coupled with specific exemptions, prescribe the "balance" struck between an individual's right to privacy and the basic policy of opening agency records and action to public scrutiny.

Tallis J.A., *General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance* (Sask.C.A.), [1993] S.J. No. 301, p. 5

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Introduction

The role of the Information and Privacy Commissioner has sometimes been described as that of the umpire in the information age.

That role has also been described as follows:

> Our recent comparative analysis of privacy protection policy has concluded that, regardless of legislative powers, every data-protection commissioner in Canada and elsewhere is expected at some point to perform seven interrelated roles: ombudsman, auditor, consultant, educator, policy adviser, negotiator, and enforcer.
>
> Colin J. Bennet, "The Privacy Commissioner of Canada: Multiple Roles, Diverse Expectations and Structural Dilemmas," *Canadian Public Administration* 46, 2 (2003)

In 1992, *The Freedom of Information and Protection of Privacy Act* (FOIP) was proclaimed. This enshrined two principles:

1. public records must be accessible to the public; and
2. "personal information" must be protected by public bodies.

FOIP applies to all "government institutions". This captures all Ministries of the Saskatchewan Government plus Crown corporations, Boards, Commissions and Agencies.

In 1993, *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) was proclaimed. This law is very similar to FOIP, but applies to "local authorities" such as schools, universities, regional health authorities, municipalities, and library boards.

In 2003, *The Health Information Protection Act* (HIPA) was proclaimed. This applies to organizations and individuals designated as a health information "trustee", defines what is "personal health information" and sets the rules for how that personal health information can be collected, used and disclosed. It also provides a right of access to personal health information and a right to seek correction of errors.

The Supreme Court of Canada has declared that laws like FOIP, LA FOIP and HIPA are special kinds of laws that define fundamental democratic rights of citizens. They are "quasi-constitutional" laws that generally are paramount to other laws.

The Supreme Court of Canada has declared that laws like FOIP, LA FOIP and HIPA are special kinds of laws that define fundamental democratic rights of citizens (Gérard V. La Forest, *The Offices of The Information and Privacy Commissioners: The Merger and Related Issues*, November 15, 2005, p. 8). They are "quasi-constitutional" laws that generally are paramount to other laws.

Mandate of the Commissioner

There are four major elements in the Saskatchewan Information and Privacy Commissioner's mandate defined by FOIP, LA FOIP and HIPA:

1. The Commissioner responds to requests for review of decisions made by government institutions, local authorities or health information trustees in response to access requests, and makes recommendations to those bodies.

2. The Commissioner responds to complaints from individuals who believe their privacy has not been respected by government institutions, local authorities or health information trustees, and makes recommendations to those bodies.

3. The Commissioner provides advice to government institutions, local authorities or health information trustees on legislation, policies or practices that may impact citizens' access or privacy rights.

4. The Commissioner provides education with respect to information rights including both access to information and protection of privacy.

Mission Statement

The people of Saskatchewan shall enjoy the full measure of information rights that have been affirmed by the Legislative Assembly of Saskatchewan.

Vision

Saskatchewan government institutions and local authorities operating in a fashion that is as transparent as possible and with the greatest sensitivity to the privacy of the people of Saskatchewan, all in accordance with the provisions of the applicable legislation.

Saskatchewan health information trustees operating in a fashion that fully respects the privacy rights of the people of Saskatchewan guaranteed by *The Health Information Protection Act* and the *Canadian Charter of Rights and Freedom.*

OIPC Values

Integrity

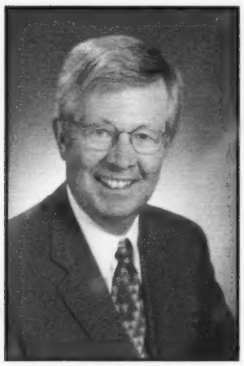
Responsibility & Accountability

Excellence

Respectful Workplace

Promote Knowledge

Commissioner's Message



R. Gary Dickson, Q.C.
Saskatchewan Information and Privacy Commissioner

This year we recognize the 20th anniversary of *The Freedom of Information and Protection of Privacy Act* (FOIP). FOIP came into force on April 1, 1992. Then Minister of Justice and Attorney General, Gary Lane, offered his prediction shortly before proclamation that the law would:

> *effectively balance the public right to information and the personal right of individual privacy.*

In this Annual Report, I intend to offer some perspective on the Saskatchewan experience to date. I will attempt to survey a number of the highlights and key developments in the evolution of Saskatchewan's FOIP regime over the last 20 years.

In past Annual Reports, I have discussed various legislative changes that I recommended to the Legislative Assembly to better meet the objectives of the three laws we oversee. In this Annual Report, I have consolidated and updated all past recommendations for amendment of FOIP, *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and *The Health Information Protection Act* (HIPA).

I will highlight key legislative reforms that warrant careful attention by the Legislative Assembly. In an age of 'big data', we increasingly see very large organizations that amass vast amounts of data. They may do this in the process of acting as an information management service provider (IMSP) or as a provider of cloud computing services to Saskatchewan public bodies and health trustees. We anticipate that most of these cloud service providers and IMSPs will be storing personal information and personal health information of Saskatchewan residents outside of this province.

Unlike Alberta, British Columbia and Quebec, we have no direct jurisdiction over IMSPs, even those within Saskatchewan. One of the effects of this development is the need to better coordinate privacy oversight to ensure that the rights of Saskatchewan residents are protected even when their personal information or personal health information leaves this province. The best way to do that would be to enact a '*Personal Information Protection Act*' similar to that in British Columbia and Alberta and now under consideration in Manitoba.

In addition, I suggest Saskatchewan should consider amending its existing legislation to enable the Commissioner in this province to share personal information and personal health information of Saskatchewan residents to the extent necessary to protect their privacy and permit cross-border investigations of privacy breaches.

Further, I reiterate the need to incorporate into both FOIP and LA FOIP a positive obligation on public bodies to protect personal information in their possession or control. This needs to be supported by an offence provision with substantial penalties for offenders. Failure to take such measures may have adverse consequences for the interoperable electronic health record, for cross border trade with partners in the New West Partnership and for avoiding privacy violations in a world of 'big data'.

I will discuss the problems that can result from a lack of written policy and procedures, as well as a lack of appropriate agreements for sharing information or for the storage and destruction of records. I will offer concrete suggestions to address these problems.

In my last Annual Report, I recommended to the Government of Saskatchewan and the larger municipalities in this province that they recognize the exciting opportunities offered by 'Open Government' and that they consider how they could move to 'Open Government - Open Data'. In this Annual Report, I will consider new developments in Saskatchewan including the launch of the first 'Open Government' initiative by a public sector body in this province and encourage the Saskatchewan Government to follow suit.

Another initiative in the last fiscal year was a unanimous resolution from all of Canada's information and privacy oversight officers on the *Canada-U.S. Action Plan on Perimeter Security and Economic Competitiveness (2012)*. In addition, I also collaborated with my colleagues in a joint letter to the federal Government with respect to Bill C-30 currently before the Parliament of Canada. This bill deals with warrantless access to the name and contact information of Internet users in certain circumstances. This same information has been recently found by the Saskatchewan Court of Appeal to be information to which Canadians would have a reasonable expectation of privacy.

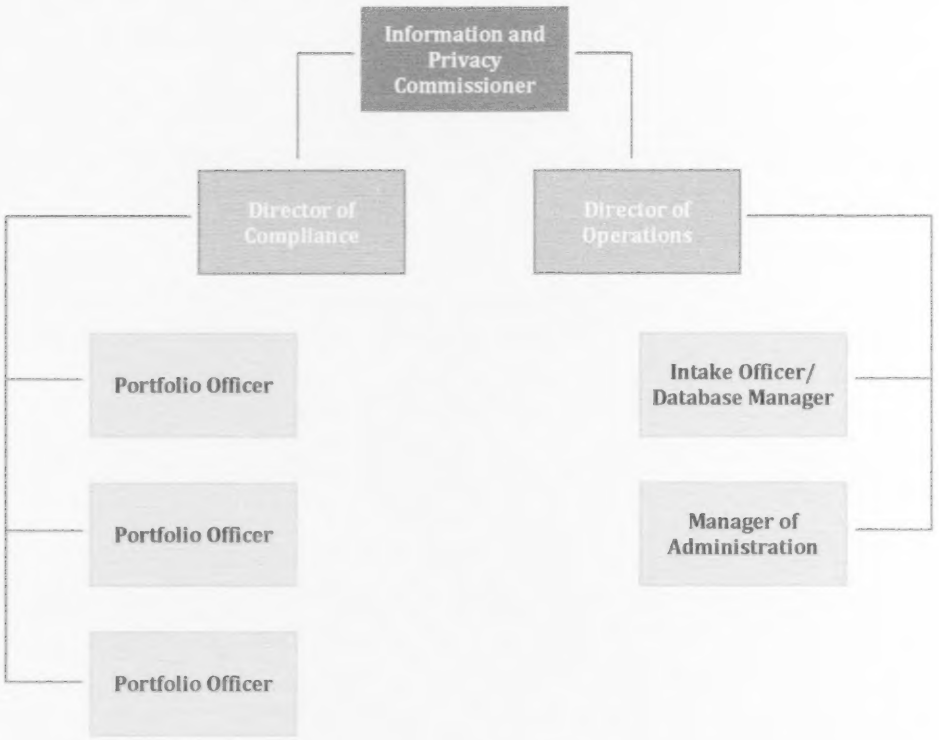
Finally, I am very proud of my colleagues in this office. This small team of seven persons has achieved a great deal over the last year. Their creativity, expertise, resourcefulness and dedication have made a significant impact in protecting and promoting the information rights of the people of Saskatchewan. I am also grateful for the excellent service this office receives from the Legislative Assembly Service.

Gary Dickson, Saskatchewan Information and Privacy Commissioner

Our Immediate Priority

My goal first articulated to the Board of Internal Economy (the Board) in 2006 was that 80% of all review files (access to information) and 60% of all investigations (breaches of privacy) should be resolved within five months. This was stated to be contingent on having sufficient resources to meet our statutory mandate. This included the ability to hire one additional Portfolio Officer in the 2007-2008 fiscal year to bring our staff complement up to four investigators. While we have made considerable progress to reduce the turn-around time, we are still well short of that objective.

Our chief limitation continues to be the decision of the Board to not allow additional permanent Portfolio Officers or investigators beyond the complement of three. In each of the last five years, I have asked the Board for a fourth full-time permanent Portfolio Officer but each time this request has been refused. While the Board did allow us one-time funding for a term position to help to reduce the backlog this year, the person covering the term left mid-way to take on a permanent position elsewhere. We are left with a backlog which includes a few case files that are more than five years old. The average lifespan of a case file presently is 15 months.



This past year, our priority was to reduce the number of our oldest case files. Many of these files were matters of first impression. Often we have encountered long delays in obtaining the record in question from the public body and much longer delays in receiving the submission from the public body to justify their decision to deny release of the record.

Notwithstanding the fact that in the past year we were required to deal with the largest HIPA breach in the eight year history of that statute, we managed to close 203 case files. This HIPA breach investigation file required almost the full-time attention from me and two Portfolio Officers for a four month period culminating in my Investigation Report H-2011-001 issued on July 14, 2011. The number of case files closed since 2003 is 1,088.

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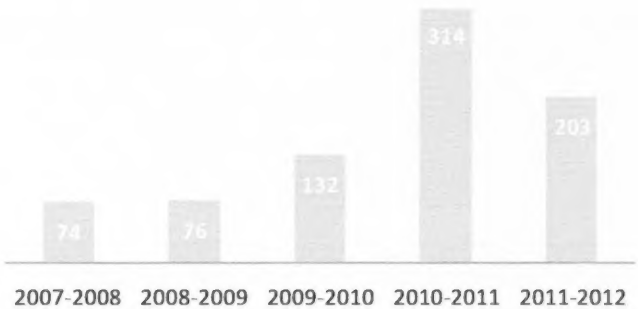
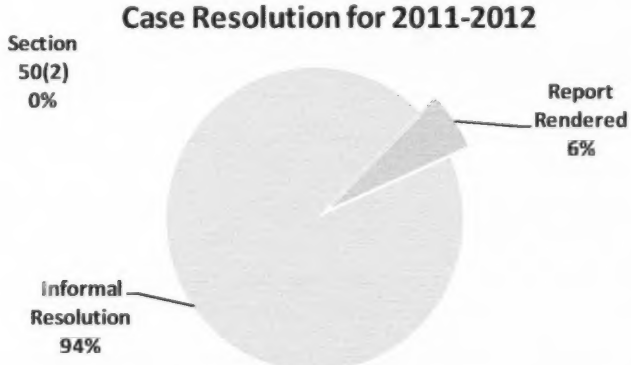
Case Files Closed per Fiscal Year



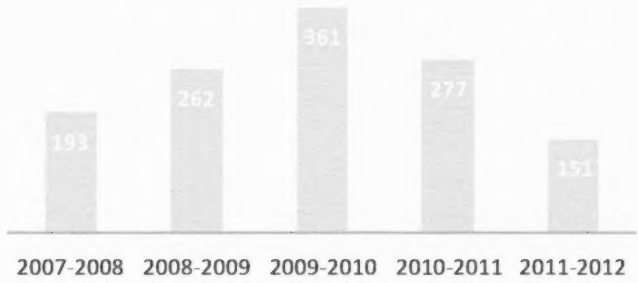
94% of those closed files in 2011-2012 resulted from informal resolution and mediation. In only 6% of those closed files was it necessary to issue a formal report.

Case Resolution for 2011-2012



As illustrated by the chart below we now have a 45% decrease from the previous year in active case files. This large decrease is attributable to the diligent effort of our Portfolio Officers to resolve our oldest case files and the death of one applicant who had made multiple request for reviews.

Active Case Files
as of March 31 per fiscal year



The number of open files is still very large for the size of our investigative team. In addition, as an office with a mandate that is largely "reactive", we need to anticipate new issues and investigations that may disrupt the work on the oldest files. Nonetheless, we will be making every effort to achieve the point where we have no case files older than two years.

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In considering file statistics, it is necessary to recognize that this does not represent one individual per file since a number of privacy breaches may involve hundreds or thousands of persons yet we would normally open only one file for each public body or trustee. In other words, the number of files will always be much smaller than the number of Saskatchewan residents who are affected by these case files.

Get It In Writing

One key lesson learned from our 20 years experience with *The Freedom of Information and Protection of Privacy* Act (FOIP) and eight years with *The Health Information Protection* Act (HIPA) is the need to have appropriate, accessible written materials. These materials should explain the legislation, promote those practices consistent with statutory compliance, and ensure consistent and comfortable understanding of these laws by everyone in public bodies that deal with records, personal information and personal health information. What is also needed are clear and detailed policies and procedures that make the expectations for statutory compliance abundantly clear to employees.

One key lesson learned from our 20 years experience with FOIP and eight years with HIPA is the need have appropriate, accessible written materials.

When I reflect on the kinds of privacy breaches and the types of access decisions that are appealed to our office, time and time again, the problem can often be attributed to insufficient written guidance for public sector and health trustee employees. This includes a:

- Lack of educational material for new employees and in-service training for other employees.

- Lack of clear and accessible written policies and procedures for handling access requests, for responding to privacy complaints, for the collection, use, disclosure, access to, and correction of personal information or personal health information.

- Lack of suitable written agreements for sharing of information between public bodies or between a public body (or trustee) and a non-regulated corporation or business or non-profit agency.

- Lack of suitable written agreements for the transport, storage and destruction of personal information or personal health information.

An information management service provider (IMSP) is a business that is contracted to process, store, archive or destroy information for a government institution, local authority or trustee.

To assist both public sector organizations and trustees who contract with private businesses and those businesses as well as the public, we developed the resource - *Contractor's Guide to Access and Privacy in Saskatchewan.* Nonetheless, we continue to encounter situations where there is no appropriate contract when outsourcing of services is undertaken by a public body or trustee.

Examples of privacy breaches for the year 2011 include the following:

- Employer shared an employee's psychological assessment with too many people within the workplace without the requisite authority.
- While on a medical leave, a Return to Work Coordinator contacted the employee's psychiatrist to discuss medical restrictions without the employee's knowledge or consent.
- Discovery of patient information in a large dumpster in the parking lot on two different sites and on two different occasions.
- Discovery of patient records in a large recycling bin.

Examples of privacy breaches for the 2011 year.

- A municipality allegedly provided media with a copy of an email sent by a citizen to the Mayor and City Councillors, who in turn directly quoted her and published her name and address.
- Patient personal health information mailed repeatedly to the wrong address by a clinic and in another case by a government institution.
- A patient of a medical clinic received a letter via regular mail. The letter had a clear window on the front through which the patient's laboratory results could be read.
- A government employee lost a briefcase that contained highly sensitive personal information regarding approximately 20 clients and their family members.
- Personal health information was faxed to a local newspaper in error.
- Letter containing patient personal health information was sent by a trustee unsealed.
- A government employee's laptop was stolen from his vehicle containing personal information; the laptop was not encrypted.

Despite the fact that FOIP is now 20 years old, there is no comprehensive manual accessible by the public to explain the elements of the statute. There is material available to assist public bodies but not only is this not transparent to the public, it also

does not cover the exemptions in Part III of FOIP. In our experience, the area that is most difficult for FOIP Coordinators is a clear understanding of the exemptions and how they are interpreted and applied.

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This issue was first addressed by me in my first Annual Report 2003-2004 as follows:

> **The Need for Written Guidelines as Resource for Government Institutions**
>
> Justice should consider producing a guide for government institutions in meeting their obligations under the FOIP Act. This would explain and clarify the technical requirements of the FOIP Act by use of examples, formal reports of our office and Saskatchewan court decisions that interpret the Act and regulations. Such a guide has proven an essential resource in other Canadian jurisdictions.
>
> We note in the Deloitte Touche *Privacy Assessment* of 2003, reference to a paucity of written materials for Justice employees. *"Justice does not rely on codified policies and procedures, but rather make use of informal arrangements and cultural norms to employees FOI requirements re the handling of personal information"* [p.131] and *"For the most part, Divisions orally communicate policies and expectations with respect to the handling of personal information to new employees as part of their orientation process."* [p. 131] and *"Although high level policy and procedures are set out in Justice manuals, most Divisions candidly admit they are lacking in specific policy and training with respect to privacy issues"* and *"Steps have been taken to ensure that employees are cognizant of the requirements of FOI, however, little policy is in evidence to which an employee may refer for guidance"* [page 132] and *"A wide range of professional and program staff deal with requests for access to personal information. Regular employee supervision is the sole means utilized to monitor compliance with the principles of FOI* [p. 133].

We recognize the on-line access and privacy orientation course developed by the Access and Privacy Branch (the Branch) of the Ministry of Justice and Attorney General (Justice) as well as other resources developed in recent years by the Branch. I am mindful that the Branch has very limited resources and that is a major limiting factor in what it can achieve in any given year. I strongly encourage the Minister of Justice and Attorney General to provide the resources to increase the capacity of this important office in order that it can offer more assistance to more public bodies and the public.

This need for clear written materials for the public and public sector workers alike is explicit in section 16 of HIPA. That section requires that any trustee must have policies that provide reasonable protection for information in the custody or control of that

trustee. Such policies must address technical, physical and administrative safeguards. In our experience, this is one of the most important features of HIPA. There is nothing comparable in FOIP or *The Local Authority Freedom of Information and Protection of Privacy* Act (LA FOIP).

Examples of a lack of appropriate written policy and procedure for access and privacy compliance are not in short supply. Examples include the following:

- **Review Report LA-2010-002** - we observed that the City of Saskatoon provided a range of services for the municipal police service, including certain human resources services. The City of Saskatoon acknowledged that there were no written agreements between the police service and it with respect to human resources consulting. This meant the question of whether the record sought by the applicant was in the possession or control of the City of Saskatoon was unclear. That lack of clarity significantly compromised a timely resolution of the citizen's request for review. Such an analysis would have been much simpler if a proper agreement was in place that addressed all services provided by the City of Saskatoon to the police service.

- **Investigation Report H-2011-001** - we found a worrisome lack of written policies and procedures for HIPA compliance by Dr. Teik Im Ooi, particularly in sections 16, 17 and 18 and a lack of appropriate contracts to safeguard personal health information when it was sent to an IMSP for transportation, storage and destruction.

- **Report on Systemic Issues with Faxing Personal Health Information, November 23, 2010** - we reported that of the 31 trustees investigated for sending errant faxes of personal health information, only 14 (45.2%) had written policies and procedures for faxing personal health information. The breakdown was 27.3% of physicians' offices and 55.6% of the pharmacies involved.

- **Review Report F-2012-002** - we reported that the Saskatchewan Workers' Compensation Board (WCB) did not have an appropriate policy to deal with personal information and personal health information of individuals which was generated by, or dealt with, by members of the Board of WCB.

- **Review Report H-2008-002** - we reported that Dr. Val Mary Harding did not have written policies and procedures for HIPA compliance.

- **Investigation Report H-2010-001** - we reported that L & M Pharmacy Inc. had failed to adopt policies and procedures to protect the personal health information in its custody and control.

In summary, there remains a compelling need for written materials to guide public sector employees and employees of trustee organizations in complying with FOIP, LA FOIP and HIPA. In addition, public sector organizations need to ensure they have appropriate written agreements for data sharing with other organizations and for out-sourcing services from an IMSP.

I encourage all public sector bodies subject to FOIP or LA FOIP and trustees subject to HIPA to inventory the type of information they have in their possession or control and determine how that is collected, used and disclosed. They then need to identify what agreements are necessary to ensure that they can meet all of their obligations under one or more of the three statutes even when the information or record may no longer be in their possession but still under their control. Those agreements need to be specific and appropriate. We detailed some of these requirements in our Investigation Report H-2011-001 at paragraphs [199] to [203].

I encourage all public sector bodies subject to FOIP or LA FOIP and trustees subject to HIPA to inventory the type of information they have in their possession or control and determine how that is collected, used and disclosed.

Open Government

In my last Annual Report, I recommended to the Government of Saskatchewan and the larger municipalities in this province that they recognize the exciting opportunities offered by 'Open Government' and that they consider how they could move to 'Open Government - Open Data'. 'Open Data' entails making vast sets of raw data, now in the exclusive custody of our public bodies, available to the public via dedicated websites with simple open licence features.

As more and more Saskatchewan residents embrace a digital society, they expect access to public records that is immediate, simple and in a form convenient to them.

As more and more Saskatchewan residents embrace a digital society, they expect access to public records that is immediate, simple and in a form convenient to them. This is often by means of their smart phone or portable computing device. Not only does this enhance accountability of the 'governors' to the 'governed', but it also creates new opportunities for creative citizens, businesses and non-profits to mash that public sector data with other data to create new products, services and even new jobs.

To learn more about 'Open Government', our office arranged for Graham Smith, Deputy Information Commissioner for the United Kingdom, to visit Regina during Right to Know (RTK) Week 2011. Mr. Smith delivered the keynote address and focused on the relatively new access to information regime created in the United Kingdom.

The United Kingdom has developed a sophisticated approach to 'Open Data' and 'Open Government' and his advice was useful for the Saskatchewan audience learning more about the advantages of 'Open Government' and the experience in another Commonwealth nation.

Notwithstanding that Australia, the United Kingdom, New Zealand, Mexico and the U.S. federal government have already implemented 'Open Government', the only provincial government in this nation to embrace 'Open Government' has been that of British Columbia. In fact, the current Premier of British Columbia declared, shortly after assuming that office, that 'Open Government' would be one of her three priority policy initiatives.

Nonetheless, more and more major Canadian cities are moving to an 'Open Government' model. These include Toronto, Ottawa, Vancouver and Edmonton.

In February 2012, the City of Regina became the very first public sector organization in Saskatchewan to unveil a plan for 'Open Government'. We were consulted by the City of Regina in the development of its plan and are very encouraged by the quality of the preparations and the breadth of the vision for becoming a model 'Open Government'

municipality. I commend the exceptional leadership demonstrated by the City of Regina for this initiative. For more information, visit www.regina.ca.

Not only will residents of Regina have access to databases for the first time in a way that is simple, immediate and without cost, but we anticipate a reduction in the volume of formal appeals to our office under LA FOIP.

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'Open Government', however, will mean revisiting our outdated FOIP and LA FOIP legislation. The experience of those jurisdictions with 'Open Government - Open Data' is that there will be important issues and conflicts to resolve in terms of claims of privacy, legal advice, cabinet confidences, and third party trade secrets. These other 'Open Government' jurisdictions have made extensive use of access to information and privacy laws since those laws provide the means and mechanisms to resolve those thorny issues. In their experience, 'Open Government - Open Data' supplements and complements, but does not supplant access to information laws.

Detailed Research and Commentary

We continue to receive requests for advice and assistance from government institutions, local authorities and health trustees who are considering new legislation, regulations, policies or programs and wish to ensure full compliance with the applicable law.

A tool that we ask public bodies and health trustees to use prior to asking for our assistance is the Privacy Impact Assessment (PIA). This form is available at our website for each of the three statutes we oversee. The PIA will help to identify shortcomings and problem areas and also provide clarity for public bodies and health trustees who need assistance with policies and procedures in their respective offices.

Communication and Education

In the last year we produced another nine issues of our e-newsletter, the *Saskatchewan FOIP FOLIO*.

In the last year we produced another nine issues of our e-newsletter, the *Saskatchewan FOIP FOLIO*. This continues to be an effective way of alerting members of Saskatchewan's burgeoning access and privacy community, and FOIP Coordinators in particular, to new access and privacy developments in the province and beyond. This publication informs subscribers of new tools and resources created by our office or by others that may be helpful. It also alerts them to new Investigation Reports or Review Reports from our office.

We undertook a number of presentations and education sessions for diverse audiences in different Saskatchewan communities. A sample of such presentations is included as Appendix 2.

Our website has proven to be an effective communication tool for the public and those bodies we oversee. In 2011–2012, our site www.oipc.sk.ca, attracted 1.3 million 'hits' or an average of 3,639 'hits' per day. In this past year, the website attracted 73,895 'visitors' who viewed more than one page on the website.

The information that must be readily available to all Saskatchewan residents includes the following:

Your Information Rights (Access to Information and Protection of Privacy)

You have the right to make an access to information request for information in any recorded form or format (paper or electronic records) in the possession/custody (on premises, etc.) or control (off site, in contractor's possession, etc.) of a government institution (i.e. Ministries, Crown corporations, boards, commissions and agencies), local authority (i.e. school and library boards, regional health authorities, municipalities, etc.) and/or health information trustee organization (i.e. clinic, dentist, pharmacy, etc.).

To make a request please see the steps located on page 18.

You have the right to request correction or amendment to records that the above noted organizations hold if you believe they contain errors or omissions.

That process is as follows:

- Start by making an access to information request to receive a copy of the record(s).
- Next, make a formal request in writing to the organization requesting correction or amendment.
- The organization will then make the change or add a notation that the request was made but it chose not to alter for whatever reasons.
- If dissatisfied, request that we undertake a review of the organization's decision.

You have the right to complain to the Information and Privacy Commissioner if you believe the organization in question has breached your privacy. We are an appeal body, so you must first deal with the organization in question.

To make a privacy complaint please see the steps located on page 19.

Your personal information is information of a personal nature about you and is defined by FOIP and LA FOIP.

Personal health information is defined by HIPA and has more to do with your health and health related services. It is not considered personal information or personal health information if sufficiently de-identified. Also, business card information and work product is generally not considered to be personal information.

You have a measure of control over what these organizations do with your personal information and/or personal health information but as they provide services for your benefit (i.e. health care, education, social services) often your consent is not required for the sharing of your information to occur as long as it is otherwise authorized by law. However, you should be informed why your information is needed and how it will be used (notice requirements). If you have questions about what personal information or personal health information is collected or how it is being used or otherwise shared, you may contact the organization's Privacy Officer to discuss.

If for some reason you do not want your information shared, you can ask the trustee organization not to share details of recent health services received with your next of kin or persons to whom you have a close personal relationship. Without this

instruction, limited information regarding your personal health information may be shared by the trustee with family and friends without your consent.

You have the right to designate another person or 'surrogate' in writing to exercise your rights or powers under these three laws. For instance, you can provide written authorization for someone to make an access request on your behalf. It does not have to be a relative or your next of kin.

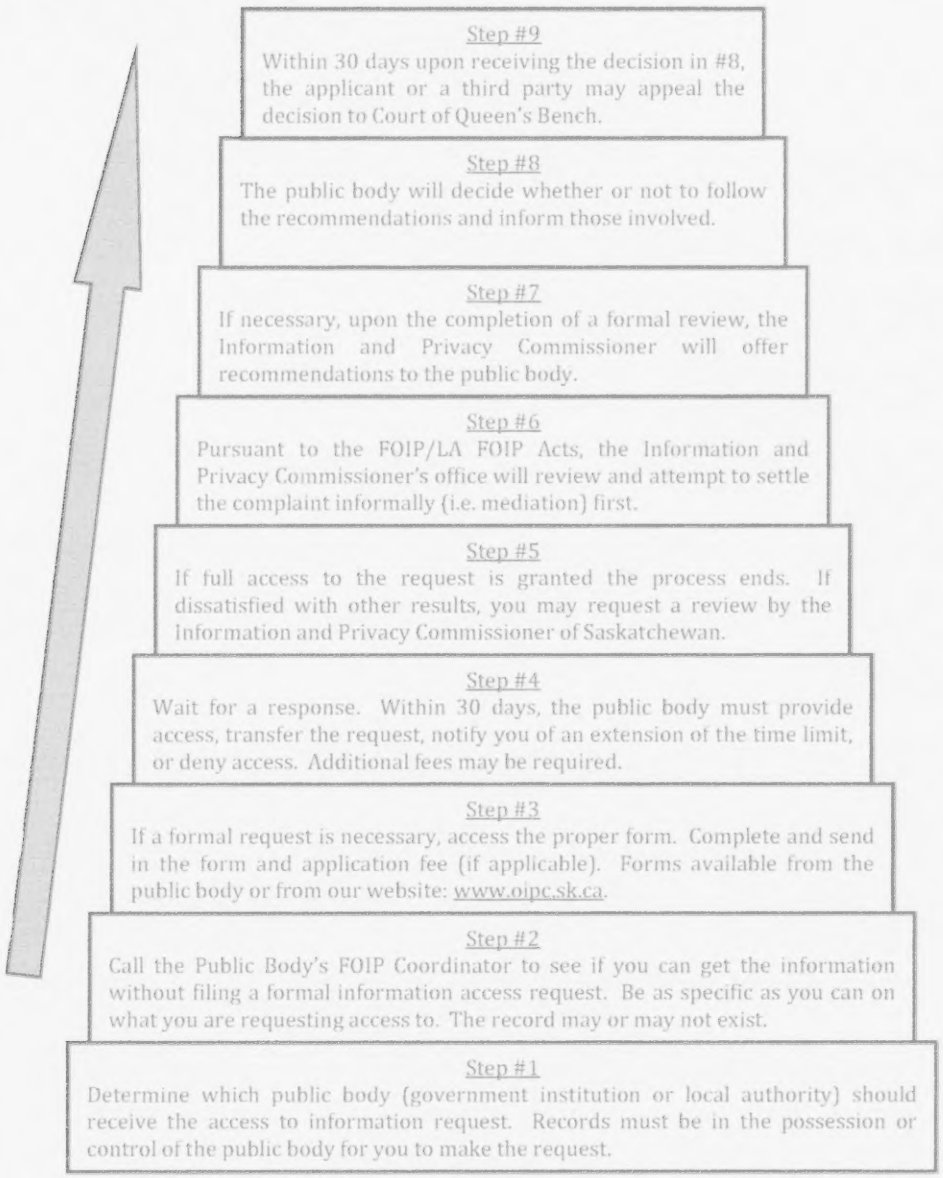
At present, you cannot 'opt out' of the electronic health record (EHR); however, you can request that eHealth Privacy Service 'globally' mask your personal health information profile in the following: the Pharmaceutical Information Program (PIP), the Picture Archiving and Communication System (PACS) and/or the Saskatchewan Laboratory Results Repository (SLRR). For more information on this service, contact eHealth Privacy Service.

As the province adds components to its expanding EHR, you now have the ability to see what is contained within each data repository (i.e. medication profile print-out, diagnostic images and lab results), but you also have the right to see which health care worker or professional has viewed your personal health information in any specified time period. In order to request a copy of either report, contact the following:

eHealth Privacy Service
Suite 360, 10 Research Drive
Regina, SK S4S 7J7
Fax (306) 798-0897
Email: privacyandaccess@ehealthsask.ca

How to Make an Access Request

The Freedom of Information and Protection of Privacy Act (FOIP) & *The Local Authority Freedom of Information and Privacy Act* (LA FOIP)


Step #9
Within 30 days upon receiving the decision in #8, the applicant or a third party may appeal the decision to Court of Queen's Bench.
Step #8
The public body will decide whether or not to follow the recommendations and inform those involved.
Step #7
If necessary, upon the completion of a formal review, the Information and Privacy Commissioner will offer recommendations to the public body.
Step #6
Pursuant to the FOIP/LA FOIP Acts, the Information and Privacy Commissioner's office will review and attempt to settle the complaint informally (i.e. mediation) first.
Step #5
If full access to the request is granted the process ends. If dissatisfied with other results, you may request a review by the Information and Privacy Commissioner of Saskatchewan.
Step #4
Wait for a response. Within 30 days, the public body must provide access, transfer the request, notify you of an extension of the time limit, or deny access. Additional fees may be required.
Step #3
If a formal request is necessary, access the proper form. Complete and send in the form and application fee (if applicable). Forms available from the public body or from our website: www.oipc.sk.ca.
Step #2
Call the Public Body's FOIP Coordinator to see if you can get the information without filing a formal information access request. Be as specific as you can on what you are requesting access to. The record may or may not exist.
Step #1
Determine which public body (government institution or local authority) should receive the access to information request. Records must be in the possession or control of the public body for you to make the request.

How to Make a Privacy Complaint

1. The complainant should first contact the Privacy Officer or FOIP Coordinator for the government institution, local authority or trustee to attempt to resolve the complaint.

   If no satisfactory resolution of the concern is reached by dealing directly with the public body, the complainant may choose to file a written complaint with the Information and Privacy Commissioner.

2. The complaint should be in writing and should provide the following:

   - Date;
   - Complainant's name, address and phone number;
   - Specific government institution, local authority or trustee against whom the complaint is made;
   - Copies of any correspondence with the public body relevant to the complaint;
   - Description of the events giving rise to the complaint; and
   - Clarify whether complainant wishes to be treated anonymous when the OIPC communicates with the public body.

3. Once we review the complaint the following will occur:

   - Once it is determined that the OIPC has jurisdiction to investigate, a Portfolio Officer will be assigned to the file.
   - The Portfolio Officer will advise the public body of the complaint and that the OIPC will be investigating under the authority of FOIP, LA FOIP or HIPA. At the same time, we will advise the complainant that an investigation is underway.
   - The Portfolio Officer will gather information from the public body to determine the relevant facts.
   - The Portfolio Officer will define the issues for purposes of the investigation and invite submissions from the public body and the complainant.
   - The Portfolio Officer will attempt to mediate, or otherwise informally resolve the complaint, with complainant and public body.
   - If no meditated settlement is possible, the Commissioner will proceed to issue a formal Investigation Report. The identity of the complainant will not be disclosed.
   - There may be a limited right of appeal to the Court of Queen's Bench by an aggrieved complainant if the complaint was handled under HIPA pursuant to section 42(1)(c). No right of appeal from a report dealing with a breach of privacy under FOIP or LA FOIP.

The Freedom of Information and Protection of Privacy Act

20th Anniversary of FOIP

Saskatchewan was the first province in western Canada to enact a comprehensive law for both access to information and the protection of privacy in 1992. The law for the most part reflected recommendations of former Chief Justice E.M. Culliton who presented a report to the Government of the day in 1981. That report borrowed heavily from the work of the Ontario Royal Commission on Freedom of Information and Protection of Individual Privacy which also culminated in its report of 1981.

In the intervening 20 years, there have been three successive part-time Commissioners – Mr. Derril McLeod, Q.C., Mr. Gerald Gerrand, Q.C., and Mr. Richard Rendek, Q.C. In November 2003, I was appointed Interim Commissioner. In April 2004, I was honoured to become the fourth Commissioner for Saskatchewan and the first full-time Commissioner.

A great deal of progress has been made since 1992 in implementing FOIP. This includes:

- A body of recommendations from the first three part-time Commissioners issued pursuant to Part VII of FOIP.
- Annual Reports from former and the current Information and Privacy Commissioners (all Annual Reports since 2003 available online at www.oipc.sk.ca).
- Adoption of the *Overarching Privacy Framework for Executive Government.*
- Appointment of FOIP Coordinators and Privacy Officers in most government institutions with delegated responsibility for administration of FOIP within their Ministry and on behalf of the Ministry.
- Conference entitled *Privacy Laws and Health Information: Making it Work* organized by the OIPC in 2004.
- 86 past issues of the *Saskatchewan FOIP FOLIO* (e-newsletter produced by the OIPC on a monthly basis) archived at www.oipc.sk.ca.

- Body of 60 investigation and review reports issued by the OIPC and archived at www.oipc.sk.ca and accompanied by an *Annotated Section Index* for each of the three statutes the OIPC oversees.

More than 970 presentations on access, privacy and health information given by the OIPC in more than 34 communities.

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- More than 30 tools and resources produced by the OIPC for the public and government institutions, local authorities, and health trustees available online at www.oipc.sk.ca.

- Approximately 1,241 investigation and review files opened since 2003 and 1,088 of those files closed, most by mediation and informal resolution.

- Canadian Bar Association (Saskatchewan) creation of Access and Privacy Law Branches in north and south Saskatchewan.

- Right to Know (RTK) activities the last week in September each year since 2006 organized by the Saskatchewan Right to Know Committee. This is comprised of volunteers from various community organizations.

- Annual Reports with respect to FOIP for each year from the Ministry of Justice and Attorney General.

- Creation of an Access and Privacy Branch within the Ministry of Justice and Attorney General in 2005.

- Development of a number of resources by the Access and Privacy Branch including:

    - Written procedures for responding to access requests;
    - Workshops for FOIP Coordinators;
    - Public list of government institutions and contact information for the FOIP Coordinator in those bodies; and
    - Copies of Information and Privacy Commissioner decisions and recommendations from 1992 to the present available on Access and Privacy Branch website.

- Open letter in September 2010 to all provincial government employees from Premier Wall emphasizing the importance of compliance with FOIP, LA FOIP and HIPA.

- Conference entitled *Saskatchewan Access, Privacy, Security and Record Management Forum: Making Connections* organized by the Access and Privacy Branch September 2010.

- In each of last three years, designation of a month as *Access and Privacy Month* by provincial government and regional health authorities.

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While I salute all of that effort and commitment, there is much more work to be done in order to realize that 1992 promise of truly transparent government and robust privacy protection for our citizens.

Legislative Reform

A 'Saskatchewan Road Map for Action' Revisited

In past Annual Reports, I have identified a number of legislative gaps in Saskatchewan's access and privacy regime. Those gaps continue to:

- Confuse and frustrate citizens and public sector employees.

- Contribute to non-compliance with the three laws that we oversee.

- Handicap our province's growth and our ability to participate as a partner in the New West Partnership.

- Generate more complaints, access denial reviews and requests for privacy breach investigations for our oversight office.

My 2004-2005 Annual Report featured *Privacy and Access: A Saskatchewan Roadmap for Action.* In that document, I catalogued more than 25 specific recommendations for statutory amendment. Our understanding is that to date no action has been taken by the Government of Saskatchewan in respect to legislative amendment of FOIP, LA FOIP or HIPA.

To my list of seven years ago, I can now add the following additional amendments that ought to be addressed by the Legislative Assembly:

- Increasing the penalties for FOIP and LA FOIP offences.
- Explicit provision in FOIP, LA FOIP and HIPA similar to many other jurisdictions that allows the Commissioner and his staff to testify in a prosecution for an offence under those statutes.
- Provide for electronic requests for access and electronic responses to access requests.
- Provide for explicit duty to assist applicants in FOIP and LA FOIP.
- Provide for a statutory review of FOIP, LA FOIP and HIPA every three years by an all-party committee of the Legislative Assembly and consideration of appropriate amendments.
- Revise the definition of "personal information" to acknowledge the difference between "business contact information" and "personal contact information".
- Revise the rules for personal information to distinguish between those actions of a public body that constitute an unjustified invasion of privacy and those that do not.
- Impose a time limit on public bodies providing the OIPC with the responsive record and a written submission to justify any mandatory or discretionary exemptions being invoked by the public body.
- Explicitly require public bodies to appoint a FOIP or HIPA Coordinator and describe the mandate of that official.
- Permit the appointment of a Deputy Information and Privacy Commissioner.
- Create whistleblower protection for employees of government institutions, local authorities and trustees who bring to our attention violations of FOIP, LA FOIP or HIPA.
- Require public bodies to proactively publish all general records released in response to formal access requests.

- Create a right to appeal to the Court of Queen's Bench in the case of a breach of privacy investigation by my office when none or only some of our recommendations are accepted by the public body or trustee.

- Create a statutory obligation for the production of an annual report on activity under LA FOIP similar to the current obligation for FOIP but expanded to capture privacy complaints as well as reviews of access denial.

In addition to the above items for legislative reform, there has been something of a chronic problem that warrants the attention of the Legislative Assembly.

Jurisdictional Issue with the Saskatchewan Workers' Compensation Board

I have now issued four different Reports with recommendations for WCB with respect to improved compliance with FOIP and HIPA (Investigation Reports F-2007-001, F-2009-001, F-2010-001 and Review Report F-2010-002).

A fundamental problem is that WCB takes the position that section 171 to 171.2 of *The Workers' Compensation Act, 1979* are somehow paramount to the requirements of FOIP and that section 4(4) of HIPA operates as an exclusion of the records in the custody or control of WCB from HIPA.

Our office receives a significant number of requests for review and complaints involving WCB; 44 WCB related files have been opened since July 2003. We also receive numerous inquiries about WCB which do not result in a file being opened.

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In recent years, we have issued two Investigation Reports involving a breach of privacy on the part of WCB:

- **Investigation Report F-2009-001** - the Commissioner determined that WCB disclosed the complainant's personal information to an independent claims advisor without authority and that WCB failed to satisfy its obligations under section 27 of FOIP to ensure that the complainant's personal information in its possession was accurate and complete.

- **Investigation Report F-2007-001** - the Commissioner found that WCB disclosed to the complainant's employer more personal information and personal health information than was necessary. We further found that WCB failed to adequately safeguard the complainant's information when it sent copies of the individual's personal information and personal health information to the complainant by ordinary mail, which was not received by the complainant and could not be accounted for.

Overall, the complaints and concerns we hear regarding WCB include the following:

- WCB demands personal health information that is not relevant to the compensable injury;

- WCB shares more information about an injury with the employer than is necessary or relevant; and

- WCB does not let claimants see their own case management files unless and until an appealable issue has been identified, and even then may not allow the claimant to view their entire file.

We are also concerned about WCB's position that the OIPC does not have jurisdiction in many cases that involve WCB. As noted earlier, WCB claims that an injured worker's access to their personal information/personal health information is solely governed by section 171.1 of *The Workers' Compensation Act, 1979* and that FOIP thus has no application.

Not only have we set out our contrary interpretation in each of our Investigation Reports but we also have made submissions to the 2006 Workers' Compensation Act Committee of Review and to the 2011 Workers' Compensation Act Committee of Review.

In the case of the 2006 Committee of Review, the Committee appeared to accept our recommendations. In fact it addressed our concerns as follows:

> Currently, there is a difference over the extent to which sections 171 to 171.2 are paramount over *The Freedom of Information and Protection of Privacy Act*. This difference contains the seeds for much dispute and costly litigation, which should be forestalled.
>
> ...

The Committee can find no compelling public policy purpose or basis for the Board to continue to be exempt from, or have a special position with respect to, the legislation and administration protecting information or personal health information that applies generally in Saskatchewan.

The Committee recognizes the unique mandate and decision-making role of the Board in the administration of justice, but does not consider the Board's mandate and role to be so unique or special that the law and remedies that apply to other administrative agencies and public bodies should not apply to the Board.

Recommendation:
Amend the Act to specify the Board is subject to the *The Freedom of Information and Protection of Privacy Act*. (sic)

The Board collects, compiles and uses extensive personal health information. There is a regime in *The Health Information Protection Act* that addresses the protection of this information while preserving access and sharing of the information by "trustees" for diagnosis, treatment and care, which the Board involves itself in through the Early Intervention Program and other case management endeavours.

The general rules and processes in many parts of *The Health Information Protection Act* apply to the Board, but it is exempt from Parts II (Rights of the Individual), IV (Limits on Collection, Use and Disclosure of Personal Health Information by Trustees) and V (Access of Individuals to Personal Health Information).

The Committee has concluded there is no overriding purpose or reason that the Board should be exempt from these parts.

Recommendation:
Repeal the exemption *The Workers' Compensation Act, 1979* has from Parts II, IV and V of *The Health Information Protection Act*.

Once these recommendations are enacted, the Board will have to review and adopt new processes and procedures for the collection, use and disclosure of personal information that will respond to the submissions the Committee received.

The Saskatchewan Government has, to my knowledge, never addressed those recommendations from the 2006 Committee of Review so the difficulties with WCB have continued unabated to this date.

A new Committee of Review was struck in 2011 to undertake a further statutory review of *The Workers' Compensation Act, 1979*. In *The Workers' Compensation Act Committee of Review, Final Report, 2011*, the Committee observed as follows:

> We firmly believe that the operational efficiency of WCB and the perception of WCB by stakeholders and the public will greatly improve if freer access to files and information is provided to all relevant parties. Access to information is a hallmark of a free and democratic society.
>
> The Committee examined the WCB's relationship to FOIP and HIPA and heard opposing opinions on what should be done. The Committee reviewed these opinions but was not able to conduct a thorough legal analysis. We suggest that future Committees examine this issue further.

In the discussion of Recommendation 21, the 2011 Committee of Review commented as follows:

> It should also be noted that sometimes the right time to gain access to a file or information may not be connected to the appeal process. **Access to files should be restrained only by privacy legislation and should not be limited to having an appeal in process.** We are concerned that many unnecessary appeals are filed and much unnecessary work generated when the issue could have been easily and quickly settled by access to files and information.
>
> Claimants should always have access to their complete files.

Recommendation 52 in the 2011 Report is as follows:

> All workers and employers have timely access to files without the need to file an appeal. A good rationale such as privacy legislation must be provided for any access that is denied.

Since my statutory mandate does not permit me to seek a trial of an issue at the Court of Queen's Bench to resolve this matter once and for all, injured workers in Saskatchewan are left in the unsatisfactory position of being able to appeal to our office but they are denied redress since WCB insists that our office has no jurisdiction to require compliance with HIPA and FOIP by WCB.

I have met with the Chairman of WCB and the Minister formerly responsible for *The Workers' Compensation Act, 1979* but this has not resulted in any change in the

approach taken by WCB. I am mindful that an aggrieved applicant has the right to initiate an appeal *de novo* in the Court of Queen's Bench however the cost of doing so will be seen by many citizens as prohibitive.

To the best of our knowledge, in every other Canadian jurisdiction except for the Yukon, the provincial workers' compensation scheme is subject to oversight by the provincial Information and Privacy Commissioner, similar to all other provincial public bodies in those jurisdictions. Saskatchewan is anomalous. The problem is that there are more than 370,000 Saskatchewan workers eligible to make a claim under *The Workers' Compensation Act, 1979* and in 2011 there were 39,689 claims reported to WCB. I submit that this is far too many citizens to leave unprotected and disenfranchised when it comes to their full information rights.

To the best of our knowledge, in every other Canadian jurisdiction except for the Yukon, the provincial workers' compensation scheme is subject to oversight by the provincial Information and Privacy Commissioner, similar to all other provincial public bodies in those jurisdictions.

Whistleblower Protection

A further matter that warrants attention by the Legislative Assembly is the absence of whistleblower protection in each of the three laws we oversee (FOIP, LA FOIP and HIPA). Each year we have a number of employees of public sector bodies or trustee organizations that contact our office to report what they believe is a breach of one of these laws.

In some cases, it is covering up a loss of personal information of clients or patients; in others it may be destruction of records to frustrate a possible access to information request. It appears that section 74 of *The Labour Standards Act* would not afford protection to an employee in that circumstance since this office would not qualify as a "lawful authority" within the meaning of subsection 74(3) and we have advised those employees accordingly.

It has been seen as important in other Canadian provinces that there be protection for such employees who disclose such complaints to our office so that they are not subject to prejudicial action by their employer.

If an employee of a public sector organization comes to our office with a breach of privacy concern or a matter related to access to information and discloses an apparent breach of one of the three laws by their employer or colleagues in their workplace what will happen?

We must advise that employee that they proceed at their own risk since they will not have protection either under *The Labour Standards Act* or under *The Public Interest*

Disclosure Act (PIDA). The only way they can obtain protection under PIDA is to go to another independent officer, the PIDA Commissioner, to then be interviewed as part of that office's intake process and seek protection. Since the PIDA Commissioner has no jurisdiction under any of the access and privacy laws, that office will then presumably complete its assessment as to whether the employee will be afforded the PIDA protection and then refer the employee back to our office so we can continue our investigation. This may well deter individuals who may already be anxious and therefore reluctant to be shuffled back and forth between two different offices. It appears that neither the regulations nor the intake process adopted by the PIDA Commissioner will satisfactorily address the foregoing concern.

I therefore recommend that a whistleblower provision be included in FOIP, LA FOIP and HIPA along the lines of similar provisions in British Columbia, Alberta and Prince Edward Island. The provision in British Columbia's *Freedom of Information and Protection of Privacy Act* is as follows:

> **30.3** An employer, whether or not a public body, must not dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee of the employer, or deny that employee a benefit, because
>
> (a) the employee, acting in good faith and on the basis of reasonable belief, has notified the minister responsible for this Act under section 30.2,
>
> (b) the employee, acting in good faith and on the basis of reasonable belief, has disclosed to the commissioner that the employer or any other person has contravened or is about to contravene this Act,
>
> (c) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene this Act,
>
> (d) the employee, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of this Act, or
>
> (e) the employer believes that an employee will do anything described in paragraph (a), (b), (c) or (d).

Right to Know Week

Since 2006, RTK Week activities occur in the last week of September each year. These activities are organized by the Saskatchewan Right to Know Committee. This Committee is comprised of volunteers from various community organizations including the University of Regina, University of Saskatchewan, Regina Public Library, Johnson Shoyama School of Graduate Studies, Canadian Bar Association, the Saskatchewan Law Foundation, the Provincial Auditor's office, McDougall Gauley LLP, MacPherson Leslie & Tyerman LLP, and McKercher LLP as well as our office.

Past RTK Weeks have featured prominent speakers including:

- David Gollub, Vice President Canadian Newspaper Association;
- John Reid, former Information Commissioner of Canada;
- David Fewer, Counsel for Canadian Internet Policy and Public Interest Clinic;
- Janet Keeping of the Sheldon Chumir Foundation for Ethics in Government;
- Professor Alisdair Roberts from Suffolk University Law School;
- Suzanne Legault, then Assistant Information Commissioner of Canada; and
- Graham Smith, Deputy Information Commissioner for the United Kingdom.

RTK Week also features the presentation of the Justice E.M. Culliton Right to Know award to a deserving public body or health trustee organization. During RTK Week, the Regina Public Library has shown movies reflecting an RTK theme.

Right to Know 2011

This office continues to partner with a number of organizations and individuals to recognize RTK and they organized a program for the week of September 26 to 30, 2011. The RTK Committee organized events in Saskatoon and Regina during the week and arranged for formal proclamations to recognize RTK Week from the cities of Regina and Saskatoon and the Government of Saskatchewan.

During RTK Week, the Chief Justice E.M. Culliton Right to Know Award was presented to the Crown Investment Corporation for its leadership in improving its compliance with FOIP. In Saskatoon, there was a presentation at the College of Law, University of Saskatchewan on 'Open Government' by Commissioner Dickson. In Regina, the United Kingdom Deputy Information Commissioner Graham Smith spoke to a crowd at the University of Regina.

It should be noted that Newspapers Canada (formerly the Canadian Newspaper Association) again published its national access to information survey results. This revealed that the municipalities of Yorkton, Saskatoon, Regina and Moose Jaw received a grade of "A" in terms of both the speed of disclosure and the completeness of disclosure. The provincial Ministries of Social Services, Highways and Infrastructure, Health, Education and Corrections, Public Safety and Policing received a "C" in terms of speed of disclosure and a "B" grade in completeness of disclosure. The rankings, particularly the noteworthy grade assigned the four Saskatchewan municipalities, are encouraging but it is important to note the authors' cautions:

- The reader should exercise caution in drawing conclusions about any individual institution's overall record solely from the results of this audit.
- No claim is made that the audit requests filed to any one institution are necessarily representative of the overall performance of the institution in answering all requests it receives.

The Local Authority Freedom of Information and Protection of Privacy Act

Legislative Reform

Need for Annual Report on LA FOIP Administration

It continues to be very difficult to assess how well LA FOIP is or is not working in this province. Unfortunately, although there is a requirement for Justice to produce an Annual Report on activities with respect to FOIP, there is nothing equivalent for local authorities. This omission warrants the early attention of the Legislative Assembly.

Although it is important to include such a requirement in LA FOIP, I can see no impediment yet huge advantage for Justice to voluntarily produce such an Annual Report on activities of local authorities under LA FOIP. I note that this is common in a number of other provinces, although in those jurisdictions it is statutorily mandated. This would provide a good opportunity to go beyond the 'access-only' focus of the current Annual Report produced by Justice and also reflect privacy complaints made during each fiscal year.

Dual Freedom of Information Laws

As discussed in my first Annual Report 2003–2004, it would be very useful to consolidate both FOIP and LA FOIP into a single instrument. Saskatchewan is one of only two Canadian jurisdictions to have one law for government institutions and a separate one for local authorities. The provisions are very similar but the existence of two different laws makes for confusion and inefficiency.

I discussed the anomalous legislative scheme in my Report F-2012-001/LA-2012-001 as follows:

> [47] It is my view that the two Acts must be considered together. Both Acts started out as consecutive Bills receiving first reading in the Legislative Assembly on April 19, 1991. On June 18, 1991 the Lieutenant Governor spoke to prorogation and stated as follows:

> Widespread consultations also revealed a significant element of demand for a less partisan government, the protection of democratic rights, and the accountability of elected governments. This spring the rules of the Legislative Assembly were changed and the first Speaker elected, to respond to the first of these concerns. The government's comprehensive package of legislation, including *The Referendum and Plebiscite Act*, *The Freedom of Information and Protection of Privacy Act*, and *The Local Authority Freedom of Information and Protection of Privacy Act*, are reforms introduced to make government more open and allow people to play a more direct role in the government.... Finally, the two freedom of information Acts provide the public with the right to know the activities of government as it touches their personal lives....

[48] It is useful to consider what was said in *Hansard* by the Minister who initiated debate at second reading on April 22, 1991 on Bill No. 70 – *An Act respecting a right of access to documents of the Government of Saskatchewan and a right of privacy with respect to the personal information held by the Government of Saskatchewan.* The Honourable Gary Lane commenced his debate as follows:

> Thank you, Mr. Speaker. I'm pleased today to rise to move second reading of The Freedom of Information and Protection of Privacy Act. **This Bill is part of the government's legislative package of democratic reforms.** It will ensure that the Government of Saskatchewan continues to operate in the climate of openness and accountability. [emphasis added]

[49] Just minutes later, the same Minister Lane initiated debate on Bill 71 – An *Act respecting a right of access to documents of local authorities and a right of privacy with respect to personal information held by local authorities.* This time he stated:

> Thank you, Mr. Deputy Speaker. This Bill, like *The Freedom of Information and Protection of Privacy Act* **is part of the government's package of democratic reforms**. It was introduced to enhance the spirit of open and accountable government at both the provincial and local levels. [emphasis added]

[50] Given that background, it is my view that the two Acts must be considered together. The apparent intention of the Legislative Assembly was that public bodies (both government institutions and local authorities), with their transparency obligations under Parts II and III of FOIP and LA FOIP cannot qualify as a third party.

We have found that some public bodies have attempted to exploit the apparent gaps between the two statutes to deny access. A good example is the argument that a

municipality that cannot be a third party under LA FOIP should be considered eligible as a third party for purposes of FOIP and that a Ministry that cannot be a third party for purposes of FOIP could be a third party for purposes of LA FOIP. This was considered in my Report F-2012-001/LA-2012-001 as follows:

> [46] I have commented on this issue of who qualifies and does not qualify as a third party in my Report LA-2009-001 as follows:
>
> > [21] A helpful resource, *Government Information Access and Privacy* by McNairn and Woodbury (McNairn), offers the following general description of what constitutes "third party information":
> >
> > > All of the access statutes provide exemptions for various kinds of information provided to the government by other, **non-governmental persons**, or affecting such persons in specified ways. This type of information is known as third party information.
> >
> > ...
> >
> > [25] Though referencing *The Freedom of Information and Protection of Privacy Act*, not LA FOIP, in my Report F-2006-002, I clarified the following with respect to third party status:
> >
> > > [75] A third party cannot be another provincial government institution since section 2(1)(j) of the Act provides that: *"third party" means a person, including an unincorporated entity, other than an applicant or a government institution."*
> >
> > [26] Similarly, "third party" is defined by LA FOIP as "a person, including an unincorporated entity, other than an applicant or a local authority." As with the above analysis, I find that the University of Saskatchewan (U of S or the University), as a local authority, cannot be a third party to which section 18 of LA FOIP may apply. [emphasis added]
> >
> > ...
>
> [51] My view is reinforced by the existence of section 13(2) of FOIP that provides:
>
> > (2) A head may refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from a local authority as defined in the regulations.

> [52] If the Legislative Assembly intended to treat a local authority as a third party there would be no reason for the inclusion of section 13(2) in FOIP since the same result would be achieved by section 19. To hold otherwise would be inconsistent with the primary purpose the Court of Appeal has ascribed to FOIP. The same primary purpose must be ascribed to LA FOIP. In other words, to hold otherwise would lead to an absurd result since the purpose of both laws is to promote openness and accountability of public bodies. In this regard, I rely on the analysis and discussion in Ontario IPC Orders PO-2602-R, MO-2588, MO-2522 and the Supreme Court of Canada decision in *Bank of Montreal v. Innovation Credit Union*, 2010 SCC 47, [2010] 3 SCR 3.26
>
> [53] [Resort Village of Fort San] therefore cannot constitute a third party since it is a local authority.

Another example of a gap in the dual legislative regime would be the definition of personal information. Both FOIP and LA FOIP reflect the need for a higher degree of transparency in terms of employees of public bodies paid by taxpayers. This is evident in section 24(2)(a) of FOIP and section 23(2)(a) of LA FOIP. Each carves out from the broad definition of "personal information" certain information about employees of public sector bodies. In FOIP the relevant carve-out is section 24(2)(a) as follows:

> (a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a government institution or a member of the staff of a member of the Executive Council;

In LA FOIP the relevant carve-out is section 23(2)(a) as follows:

> (a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority;

We have discovered some local authorities that take the position that the name or salary of a government employee may be non-protected information when it is in the possession of a government institution. They also take the position, however, that precisely the same information when in the possession of a local authority must be treated as "personal information" and protected. We have also encountered the parallel approach taken by some government institutions. This appears to fly in the face of the presumed intention of the legislature that the name and salary of a public sector employee should be available to the public.

Obviously, if there was a single FOIP statute that applied to both government institutions and local authorities as is the case in every one of the other 12 Canadian provinces and territories, except for Ontario, then that presumed intention would be crystal clear. Because of the fact that the Assembly has instead created two similar parallel laws for two different kinds of public bodies it appears that there is a gap.

For all of the reasons discussed above in the context of the question of who is or is not a third party, I find that to require the names of employees of a local authority to be severed when a request is made for that information under FOIP would be an absurd result. I am guided by the approach taken by the Federal Court of Appeal in *Canada (Information Commissioner) v. Canada (Transportation Accident Investigation & Safety Board), 2006 FCA 157*, [2007] 1 FCR 203. The court noted that the Supreme Court of Canada has often stated that the *Privacy Act* and the *Access to Information Act* must be read together as a "seamless code" following a "parallel interpretative model" that balances the competing values of access and privacy. Both of these federal Acts were enacted at the same time as part of a legislative package for accountability. A similar interpretative approach is warranted here in respect of FOIP and LA FOIP.

The fact that these arguments are being raised and that information is being withheld from applicants in spite of our analysis begs a statutory solution. In the meantime, I will continue to consider both statutes when interpreting either one and consider that the modern principle of statutory interpretation as construed by the Supreme Court of Canada leads me to avoid an interpretation that would create an absurd result.

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Apparent Confusion over the Burden of Proof on a Review

As noted in the Case Summary section of this Annual Report, in the past year we issued four formal reports in which the local authority was the City of Saskatoon. Since this was a relatively large number of all LA FOIP reports issued by our office, I appended a Postscript to my Review Report LA-2011-004. In the Postscript, I observed that common to each of these matters was a failure of the City of Saskatoon to meet the statutory burden of proof. The submissions received from the City of Saskatoon typically consisted of a very brief argument which, in most cases, was a restatement of the City of Saskatoon's conclusion that a particular exemption applies. As noted in the Postscript:

> If the Legislative Assembly had intended that the City should be the ultimate arbiter of what should or should not be released to the public, there would have been no need to assign oversight responsibility to an independent office of the Assembly with a right to appeal to the Court of Queen's Bench. If the Assembly had intended that the Commissioner should simply defer to the decision of the local authority to withhold all or part of a record, there would have been no reason for the procedure whereby an aggrieved citizen can ask our office to review the decision of the local authority. Similarly, there would have been no reason for the burden of proof provision if the Assembly thought that deference should be paid to the decision of the local authority in denying access.

To the extent that a local authority views the purpose of LA FOIP as to make the appeal to the Court of Queen's Bench the primary means of holding local authorities accountable, it misconstrues the purpose and scheme of LA FOIP. As the Newfoundland Court of Appeal recently opined, "The purpose of [the Newfoundland counterpart to *The Local Authority Freedom of Information and Protection of Privacy Act*] is to create an alternative to the courts." I agree with that assessment. I have offered to meet with the Mayor, City Manager and/or Council to discuss the need to better meet the City of Saskatoon's transparency requirements and its statutory obligations under LA FOIP. I have encouraged the City of Saskatoon to participate in such a process as quickly as possible in order that Saskatoon residents may enjoy the full benefits of the rights guaranteed by LA FOIP. The Mayor wrote to me advising that the City of Saskatoon would consider my request.

The Health Information Protection Act

Legislative Reform

Our experience of more than eight years with HIPA has revealed the need for legislative amendment to address the following matters:

- I am recommending that a recent Alberta legislative change be considered by the Saskatchewan Legislative Assembly on a priority basis. This is the provision that allows the Commissioner to share information about matters within his jurisdiction with the Commissioner(s) in other jurisdictions where more than one jurisdiction is involved. There are currently strict confidentiality requirements in FOIP, LA FOIP and HIPA that constrain me from sharing case file information with the oversight agency in Alberta or Manitoba or for that matter any other jurisdiction.

  A good example is provided by the situation in Lloydminster where the hospital is in Saskatchewan but many of the medical clinics and physicians are in Alberta. A privacy breach can easily be imagined that may impact Netcare in Alberta and e-Health Saskatchewan and the health information laws in each province. The Alberta Information and Privacy Commissioner now has legislative authority to share information with this office but we cannot currently reciprocate. I anticipate this will limit our ability to provide prompt and efficient service to Saskatchewan residents whose personal health information needs to cross provincial borders.

- The definition of trustee in subsection 2(t) does not accommodate the situation where personal health information is in the custody or control of an organization that does not otherwise qualify as trustee. This could be a municipality or a private corporation owned by persons who are not health professionals.

- HIPA is focused almost exclusively on trustees, but there is a need to capture volunteers, contractors, physicians with hospital privileges and ensure parallel obligations and duties for those persons.

- Revisit the provision for deemed consent, particularly given the confusion that ensues when so many trustees assert that HIPA is consent based but include 'deemed consent' or no consent in that misleading characterization. For

HIPA is focused almost exclusively on trustees, but there is a need to capture volunteers, contractors, physicians with hospital privileges and ensure parallel obligations and duties for those persons.

example, section 26(3) of HIPA should be amended to ensure that the requirement is for express consent and not deemed consent before an employer can use an employee's personal health information for employment purposes.

- Revisit sections 8 and 18.1 which were obviously designed for a very different model for EHR infrastructure than the distributed database system now being constructed and which explicitly designated SHIN or the Saskatchewan Health Information Network and not e-Health Saskatchewan as the body responsible for EHR.

What are the consequences of not addressing these proposed changes in HIPA?

We frequently encounter confusion over really basic questions such as who is the trustee when the apparent owner of a medical clinic is a municipality that has no one with particular training or expertise to properly address the statutory responsibilities of a trustee. In such cases, often there is no trustee within the meaning of section 2(t) of HIPA. This likely translates into a failure to provide accountability to patients, confusion over how to handle a patient's request for access to their personal health information and over how to deal with a request by a third party for disclosure of a patient's record.

In some cases we encounter a health professional who is an employee of an organization that is not a "trustee" under HIPA but who believes in error that he or she has all of the rights and obligations of a trustee.

We frequently find patients who are confused when they are told wrongly that HIPA is a 'consent based' statute but that the particular trustee they are dealing with has 'deemed' their consent even without speaking with the patient.

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Compliance Highlights

The year 2011-2012 has been a particularly challenging year for the 'health information file'. We dealt with a number of complaints that personal health information had not been properly destroyed and was discovered in recycling bins or

loose in public places. The major HIPA incident in this past year occurred March 23, 2011 but it was in the 2011-2012 fiscal year that our office undertook and completed our breach investigation into the largest breach involving personal health information since HIPA was proclaimed on September 1, 2003. This privacy breach investigation is discussed further in the Case Summaries section of the Annual Report.

This major investigation in the spring of 2011 was however only one of a number of breach investigations undertaken in this past fiscal year. What is troubling is that we had encountered a spate of abandoned personal health information in 2008 involving physician medical files in the communities of Moose Jaw, Yorkton, and Eastend. Although we identified this as an important and predictable risk for trustees at that time, it appears that three years later we still have a number of trustees ill-prepared for HIPA compliance.

In response to the major Regina breach, our office took a number of initiatives. We produced an *Advisory for Saskatchewan Health Trustees for Record Disposition* and requested that all of the twenty-six health regulatory colleges and bodies distribute this to all of their members. We acknowledge that the Minister of Health also sent a registered letter to every physician in Saskatchewan highlighting elements of our advisory including the seven steps necessary to be HIPA compliant.

We also met in Saskatoon with the network of independent regulatory bodies for the 26 self-governing health professions and disciplines. The purpose was to discuss means to increase HIPA compliance and engage their members in HIPA compliance efforts. We also did a presentation to the members of the Saskatchewan Medical Association on safeguarding patient records and HIPA compliance generally. We also presented to the students in the Health Information Management program at SIAST. In March 2012, I presented on HIPA to approximately 300 nursing students in Regina and Saskatoon by video link.

Our office collaborated with our colleagues in Manitoba, Alberta and British Columbia for the *Western Canada Health Information Privacy Symposium* which was held in the spring of 2012. This brings together health information experts, oversight officials, health professions and regional health authorities to explore issues and best practices for personal health information in both paper and digital form.

We travelled to Melfort and Prince Albert to meet with senior officers of the Kelsey Trail Regional Health Authority (RHA) and the Prince Albert Parkland RHA respectively. In Prince Albert, we met with the RHA Board, RHA senior officers and employees, staff of a large medical clinic, and the Medical Association of Prince Albert.

Common Myths about HIPA and Personal Health Information

In the course of our work we have encountered a number of common myths that have contributed to breaches of HIPA. These include the following:

Myth #1: Physicians, pharmacists and other health professionals who qualify as trustees will sometimes advise that so long as they keep a copy of their code of ethics handy and ensure that they are always acting in what they deem to be the best interests of the patient, they have no need to worry about HIPA.

Our Response: Specific provincial law trumps ethical codes whenever they conflict. Many ethical codes in any event require the professional to obey the law. We suggest to those trustees that if ethical codes were seen to cover the field there would have been no reason to legislate a stand-alone health information law - HIPA.

Health professionals are steeped in a culture of confidentiality but not in a culture of privacy and there is a big difference.

Unquestionably, health professionals are steeped in a culture of confidentiality but not in a culture of privacy and there is a big difference. Confidentiality is all about the health record and protecting it from unauthorized viewing by anyone without a legitimate need-to-know. Privacy is focused however on the patient although confidentiality is subsumed and captured by the larger concept of privacy. Privacy involves the patient's right of access to their own personal health information, right to seek correction of errors, duty to assist, general and transaction specific duties for trustees, limits on collection, use and disclosure and the right to appeal to an independent Information Privacy Commissioner (IPC). All of these privacy elements will likely be quite new to many health professionals. In our Saskatchewan experience too many health professionals still don't know what they don't know.

Myth #2: The biggest threat with the move to the EHR is that posed by hackers.

Our Response: Although vast sums are spent on security to prevent hacking into the health databases, our experience in Saskatchewan is that the biggest threats to privacy are internal not external. The threat is posed by two factors:

1. too many trustees have been careless in training staff, have failed to provide accessible tools and resources, and failed to create appropriate policy and procedure; and

2. administrators of health service organizations fail to understand the risks posed by curious staff with user privileges who snoop for personal reasons.

Trustees need to focus on those two factors: having appropriate policy, procedure, training, tools and resources and on how to protect against the curiosity of some health workers.

Myth #3: Never mind these breaches that flow from paper records blowing around in the wind or those discovered in a dumpster JUST AS SOON as we digitize all patient personal health information, these embarrassing breaches will be behind us.

Our Response: Even with the historical system of paper records for patients there certainly were risks of snooping but digital health records pose a qualitatively different challenge. With paper records, there was the risk that one of the staff in a medical office might snoop in the paper record when they had no legitimate need-to-know that patient's personal health information.

With the EHR, it is entirely likely that we will have as many as 10,000 approved users with the technical ability to view anyone's EHR and the personal health information in it from anywhere in this very large province. This will potentially expose far more of any patient's personal health information to potentially far more people than would be the case by someone snooping in paper records in a physician's office.

My view is that the breaches we encounter too often reflect a lack of respect for the patient and that problems can happen whether the personal health information is in hard copy or digital format. It is just the nature of the breach that changes but the underlying reasons for breaches persist.

Myth #4: There is no privacy breach unless there is some evidence that an unauthorized third party actually views my personal health information.

Our Response: The statutory obligation is to take reasonable measures to protect personal health information including technical, physical and administrative safeguards. A failure to meet that requirement constitutes a breach of HIPA regardless of whether a third party ever views the personal health information

The statutory obligation is to take reasonable measures to protect personal health information including technical, physical and administrative safeguards. A failure to meet that requirement constitutes a breach of HIPA regardless of whether a third party ever views the personal health information.

eHealth Saskatchewan

In December 2011, the Government announced that responsibility for EHR would now be assumed by a new Crown corporation – e-Health Saskatchewan. I have a number of outstanding questions about how this will operate in practice.

I note that when HIPA was being debated in the Legislative Assembly what was contemplated was a single massive database with all personal health information for all residents of the province. It would be the responsibility of the Saskatchewan Health Information Network or SHIN. Subsequently, as EHR was under development, responsibility was brought back into the Ministry of Health (Health) and in particular into the Health Information Solutions Centre.

Now it appears that this has been further revised to move responsibility from the Ministry to the new Crown corporation. Since a fundamental issue with the EHR is accountability to patients for what is done with their sensitive, prejudicial personal health information, we are still attempting to determine what the impact will be with this latest development.

One ongoing concern is the fact that all of these changes, as well as the development of the EHR itself, are not very transparent to patients. I continue to believe that this may well result in problems down the road when patients learn that they and their primary health care provider will have diminished control of their personal health information and what happens to that information.

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We have attempted in past Annual Reports, particularly 2004-2005, 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011 to focus on specific major issues related to the EHR. This includes the following issues:

- accountability;
- patient access to their own personal health information;
- consent;
- disclosure to third parties; and
- patient portals.

Hospital Fundraising

The last fiscal year has seen new developments with respect to hospital fundraising and how that is done. In 2009, we had expressed concerns about the new HIPA fundraising regulation. This would permit RHAs to disclose certain personal health information to foundations for fundraising purposes. The 2009 regulation permitted such disclosure to be done on an opt-out basis where the onus to opt out is on the patient and the default is the information will be shared. The data elements in question would be the name and contact information of the patient and the fact that they had recently been in a hospital in the region to receive a health service. All of these data elements qualify as "personal health information" in accordance with section 2(m) of HIPA. Since the new regulation enables, but does not require, this kind of non-consented disclosure for a purely secondary purpose. We communicated to all 13 RHAs the factors they would need to consider in exercising their discretionary authority.

In this past year we have been advised that all 13 of the RHAs would retain the requirement that there would be no disclosure for fundraising purposes without the prior express consent of the patient. This would align with privacy best practices and demonstrates a commendable respect for the role and the privacy of the individual patient. That position also aligns nicely with the emphasis of Health on 'patient first' healthcare.

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Case Summary Reports

Review Report F-2012-002

(Saskatchewan Workers' Compensation Board)

On January 30, 2012, my office issued a Review Report involving WCB. In this case, the Applicant submitted a request for access to WCB for records involving the Members of the Board of WCB including minutes and correspondence with the Labour Minister and external bodies. In response, WCB provided only a copy of the "claim file". The Applicant clarified that he was not seeking his claim file but rather other documents and materials involving the Board and its Members.

WCB initially took the position that there would be no records responsive to the access request in any place other than on his claim file and maintained that position for almost three years. Thirty-four months after the request for access was made, WCB acknowledged that there were additional records related to the Applicant and his dealings with WCB but that these records were no longer available. I found that WCB failed to discharge its implicit duty to assist and failed to conduct an adequate search for responsive records.

I found that in the absence of any WCB policy framework for notes and records created by Members of the Board, and in the absence of such notes and records, I was unable to conclude that such notes and records could not be captured by the scope of FOIP.

I recommended that WCB immediately improve its policy dealing with the search for responsive records regardless of whether they are part of the "claim file". This should include appropriate documentation of search efforts. I further recommended that WCB develop a policy and undertake training for Members of the Board with respect to any records generated by the Board collectively or Members of the Board individually with respect to individuals and claimants. I recommended that the Minister responsible for WCB take steps to resolve the issue of the applicability of FOIP and HIPA to WCB records.

In its response, WCB agreed to undertake a further search for responsive records. WCB also advised that it had scheduled a review of its Privacy of Information Policy and associated procedures for the fall of 2012 and that all documents pertaining to decisions of the Boards or the Board Appeal Tribunal are already placed on the claim record. WCB stated that it could not accept the recommendation noted in the Report at [57] as it pertains to notes taken by members of the Board Appeal Tribunal when

carrying out their quasi-judicial adjudicative function, but accepted that WCB policy pertaining to records retention should be amended to speak to notes taken by Members of the Board when carrying out policy making and/or administrative functions. Finally, in terms of the recommendation at [59], WCB advised that it accepts the recommendation regarding educating employees regarding duty to assist.

It is our understanding that additional responsive records were later identified and provided to the Applicant.

On March 8, 2012 Justice advised my office that it would take into account my recommendation for clarifying the issue of jurisdiction of my office when considering the 2011 Committee of Review Report.

Review Report F-2012-003

(Ministry of Government Services)

The above noted Review Report was issued on March 29, 2012. The Applicant made two separate access to information requests to the Ministry of Government Services (the Ministry) pertaining to the sale of Crown land. Included in the responsive material were 14 documents that the Ministry withheld in full or in part pursuant to sections 18(1)(d), 19(1)(b), 19(1)(c)(i), 19(1)(c)(ii), 19(1)(c)(iii), 22(a), 22(b) and 22 (c) of FOIP. I found that the Ministry had not met the burden of proof in applying section 18(1)(d) of FOIP as it did not demonstrate that disclosure could reasonably be expected to interfere with contractual or other negotiations. Further, I found that the Ministry had not identified the affected third Parties and as such sections 19(1)(b), 19 (1)(c)(i), 19(1)(c)(ii) and 19(1)(c)(iii) of FOIP did not apply. Finally, I upheld the Ministry's decision to withhold certain documents pursuant to sections 22(a) and 22 (c) of FOIP.

I recommended that the Ministry should release pages 23 to 25, 44 to 47 and 48 to 49 of Record #1 and pages 29 to 30 of Record #2 in their entirety to the Applicant. I further recommended that the Ministry should exercise its discretion and consider releasing the records subject to sections 22(a) and 22(c) of FOIP.

On the first recommendation, the Ministry indicated that it intended to comply. The Ministry did reconsider its decision to withhold documents subject to section 22, and advised our office that it had then elected not to disclose the said documents.

Review Report F-2012-001/LA-2012-001

(Ministry of Government Services/Resort Village of Fort San)

Review Report F-2012-001/LA-2012-001 involves both a government institution and a local authority. It was issued by my office on January 6, 2012. In this particular case, access requests were made by the same Applicant to both the Ministry of Government Services (formerly Saskatchewan Property Management) and the Resort Village of Fort San (RVFS) for similar records.

The Ministry decided to withhold part of a responsive record, a proposal, relying on sections 13(2), 19(1)(b), 18(1)(d) and 18(1)(f) of FOIP. My office undertook a review and found that section 13(2) did not apply because there was insufficient evidence to demonstrate that the proposal was obtained in confidence from RVFS. I concluded section 19(1)(b) could not apply as a local authority; RVFS, cannot constitute a Third Party. I also found that the Ministry had not met the burden of proof to demonstrate that sections 18(1)(d) and 18(1)(f) applied in the circumstances to any of the responsive records in question. I therefore recommended release of the withheld information in full to the Applicant.

Insofar as RVFS was concerned, even though they disclosed 32 responsive records to the Applicant, he was dissatisfied as he asserted that there should be additional responsive records. I undertook this second review to determine if there were additional responsive records in the possession or under the control of RVFS pursuant to section 5 of LA FOIP. I found that RVFS had not performed an adequate search for records. I made several recommendations related to the records management system of RVFS. Also, based on evidence taken from the 32 disclosed records and from the other review involving the Ministry, I concluded that there were additional records under the control of RVFS. I recommended that RVFS obtain a copy of those records and provide the Applicant with a new section 7 response.

I recommended that the Ministry of Government Services release the entire record to the Applicant. I recommended that the officers and employees of RVFS seek training on LA FOIP and that the Mayor of RVFS immediately cease storing Village records within his personal files at his residence. I recommended that officers and employees of RVFS document searches for records in regard to all future requests under LA FOIP. I further recommended that RVFS adopt a record retention/disposition schedule. This should include guidance on the type of documents that should be retained by RVFS. I recommended that the RVFS should obtain a copy of the proposal from the San Echo Group and issue a new section 7 response to the Applicant.

I recommended that the Minister of Justice consider whether an offence has been committed pursuant to section 56(3)(c) of LA FOIP.

Though the Mayor of RVFS responded to us on January 11, 2012, the response did not speak to any of the specific recommendations in question. The Mayor's main assertion was that RVSF had not "knowingly, broken any laws."

In terms of the recommendation regarding possible prosecution, Justice advised us on February 14, 2012 that it would not proceed.

By way of letter to the applicant dated February 7, 2012, we learned that the Ministry of Government Services would not release the record in question to the Applicant as recommended by the Commissioner. However, the Ministry of Government Services advises us that it provided a copy of the record in question to RVFS.

Investigation Report H-2011-001

(Dr. Teik Im Ooi carrying on business as Dr. Teik Im Ooi Medical Professional Corporation, Albert Park Medical Clinic, Albert Park Medical Centre and/or Albert Park Family Medical Clinic)

Investigation Report H-2011-001 was issued on July 14, 2011. This investigation began on March 23, 2011 when my office was alerted to a large volume of patient files in a recycling bin in south Regina. This was located on the corner of a shopping centre parking lot near an office building.

Our investigation determined that there were 180,169 pieces of personal health information (including approximately 2,682 patient files) in the recycling bin. These records belonged to Albert Park Family Medical Centre (APFMC) located in Gold Square. The responsible trustee was Dr. Teik Im Ooi.

I determined that the patient records were thrown into the recycling bin by two employees of a contracted maintenance company for Golden Mile Shopping Centre (a building adjacent to Gold Square). I also determined that the patient records had been moved from APFMC for storage on the second floor of Gold Square beginning in 2005. By 2007, approximately 150 boxes of patient records had accumulated there. This was the first of five different moves of the patient records that involved two different buildings and four different storage rooms or areas over a period of almost six years. For all intents and purposes, APFMC appeared to have lost track of the records when

they were moved from their original location at APFMC in 2005. At that point, there was no record or catalogue of the contents of the boxes. In addition, the boxes were not marked in any sequential fashion to be able to trace their subsequent moves. There was little to no involvement by APFMC in four of the five moves and no supervision by APFMC of the moves nor any inspection of the off-site storage spaces. There was no written agreement between Dr. Ooi and third parties who acted as information management service providers (IMSP). It was determined that from 2007 until March 23, 2011 the large volume of patient personal health information was unprotected from many people who would have had no legitimate 'need-to-know' that patient information. This included workmen, labourers, staff of Golden Mile Shopping Centre, and a large crowd of more than 3,600 people who toured the basement where the patient files were stored in an unlocked space during the last three weeks of October 2010.

Although, as noted above, approximately 150 boxes of patient records were moved from APFMC for storage purposes between 2005 and 2007, the discovery of files in the recycling bin leaves unaccounted approximately 125 of those boxes of patient records. More than three weeks into our investigation APFMC advanced a theory that the missing 125 boxes had been moved back to APFMC at some point in 2007. Despite our further investigation, there is no reliable evidence that confirms this theory nor particulars of how such a move happened or who undertook the move. In any event, without an inventory of the box contents before they left APFMC and identification tags or numbers to allow tracing of the files, there is still the problem of a much larger number of patient files that left APFMC and did not end up in the recycling bin on March 23, 2011.

I found that Dr. Ooi failed to meet the requirements of section 16 of HIPA by the failure to have written policies and procedures to adequately safeguard patients' personal health information. Further, Dr. Ooi failed to take the steps required by section 17 of HIPA to ensure that the patients' personal health information was stored in a way that could be retrievable, readable and usable and to ensure that records were destroyed in a manner that protects the privacy of the affected patients. Dr. Ooi failed to put in place agreements and mechanisms required by section 18 in dealings with the IMSPs who provided storage, transportation and destruction of personal health information.

I made 11 recommendations including:

1. That Dr. Ooi provide notification to affected patients, past and present of APFMC consistent with our office's Privacy Breach Guidelines.

2. That for those patients related to the 2,682 files involved in this breach, a letter in a form satisfactory to our office, be mailed to each patient explaining what has happened, what corrective action will be taken to prevent a reoccurrence of the breach and advising them that they have the right to contact our office if they are dissatisfied with the action taken by Dr. Ooi and APFMC.

3. That a newspaper advertisement be published in the *Regina Leader-Post* on two successive weeks that provides the information described in 2 above.

4. That Dr. Ooi provide our office, within 30 days, comprehensive written policies and procedures for the administrative and physical safeguards contemplated by sections 16, 17 and 18 of HIPA.

5. That Dr. Ooi enter into formal written agreements with all existing IMSPs within 30 days and provide our office with copies.

6. That Dr. Ooi undertake, within 60 days, an intensive training program for all staff at any of her clinics in the City of Regina with respect to HIPA with particular emphasis on those requirements that go beyond simply a confidentiality requirement.

7. That Dr. Ooi ensure that each member of APFMC staff execute a confidentiality undertaking that includes an acknowledgement that breach of HIPA and APFMC privacy policies and procedures may be grounds for dismissal with cause.

8. That Dr. Ooi provide our office, within 60 days, a written plan that outlines how she intends to address the large volume of un-catalogued patient files currently being stored at Transcona Medical Clinic. The written plan should include what is contemplated for the retention and destruction of the records.

9. That the College of Physicians and Surgeons of Saskatchewan implement a mandatory requirement for a comprehensive HIPA training program and monitor attendance of its members.

10. That the Ministry of Health complete a comprehensive HIPA manual that provides detailed, concrete and practical information to all trustees and the public on compliance with all provisions of HIPA with particular emphasis on sections 16, 17 and 18.

11. That the Minister of Justice consider commencing a prosecution pursuant to section 64 of HIPA in respect to multiple breaches documented in this Investigation Report.

The response received from APFMC included copies of draft individual patient and newspaper notifications. In terms of how to contact individual patients we were advised that it would send out notification to patients in the method suggested by our office and the advertisment would be displayed in two consecutive Saturday editions of the *Regina Leader-Post*. For the other recommendations, we were advised that more time was needed to determine next steps. By way of letter August 30, 2011, we were provided a copy of its Privacy Manual which contained the steps taken by Dr. Ooi to address concerns with compliance with section 16 to 18 of HIPA. In this same letter, we were advised that Dr. Ooi had entered into confidentiality agreements with all relevant parties including IMSPs. Further noted is that Dr. Ooi and her staff attended a HIPA training session on August 20, 2011 provided by the Ministry of Health and she obtained a signed confidentiality undertaking from her staff entitled *Confidentiality and Protection of Personal Health Information Agreement for Employees of Albert Park Family Medical Centre*. Finally, the issue of stored patient records at the Transcona Medical Clinic appears to have been addressed. We were informed that the trustee was in the process of cataloguing those records and once completed, they would be sent for destruction based on the APFMC Policies and Procedures for Destruction of Personal Health Information.

In terms of a possible prosecution, it is our understanding the patient records that had been in our custody throughout our investigation were subsequently seized pursuant to a judicial warrant obtained by the Government. We understand that this matter of prosecution is still being reviewed by Justice.

Investigation Report LA-2012-001

(City of Moose Jaw)

The above noted Investigation Report involving the City of Moose Jaw was issued on March 14, 2012. Two employees of the Moose Jaw Board of Police Commissioners (the Board) complained that details of their salary had been published by the City of Moose Jaw in its annual public accounts without their consent and without lawful authority. There is authority for the City of Moose Jaw to publish in its public accounts information about the salaries paid to the employees and officers of the City of Moose

Jaw and of any board, commission or other body that is appointed by *The Cities Act* and which is prescribed. That would require that the Board be "established pursuant to *The Cities Act*." I found that the Board was instead established pursuant to *The Police Act, 1990*. In the result, the information of the employees in question qualified as "personal information" within the meaning of LA FOIP. There was no authority in LA FOIP to disclose the salary information of the complainants. By reason of the operation of section 11 of *The Cities Regulations*, the City of Moose Jaw is constrained from publishing the complainants' personal information in identifiable form. I further recommended that the Legislative Assembly clarify whether it intends that boards of police commissioners and municipal police services in Saskatchewan are or are not "local authorities" for purposes of LA FOIP. If it is not the intention of the Legislative Assembly that municipal boards of police commissioners and municipal police services be made subject to LA FOIP, then it should consider amendment of *The Cities Act* and *The Police Act, 1990* to enable the publication of salary information of employees of those municipal boards of police commissioners. The Commissioner recommended that those local authorities that are subject to LA FOIP should be much more transparent to citizens and to that end Justice should provide suitable public information about which bodies are or are not subject to LA FOIP.

The City of Moose Jaw advised us that it agreed with the final three recommendations set out in the above noted Report. It did however not agree that the City of Moose Jaw should stop its publication of police salaries in its Public Accounts asserting that it has done so since 1988. We note this was not addressed by the City of Moose Jaw during our protracted investigation into this matter.

Review Report LA-2011–002

(City of Saskatoon)

This Review Report, involving the City of Saskatoon, was issued on November 21, 2011. The Applicant had filed an access to information request with the City of Saskatoon pursuant to LA FOIP. The request was for the draft audit report on the City of Saskatoon's snow and ice program. Although the City of Saskatoon cited certain exemptions in its response to the Applicant's request, during the review process all exemptions were withdrawn except for sections 18(1)(b) and 18(1)(c) of LA FOIP. I determined that the information in the draft audit report was not supplied by the Auditor as a third party, but rather the information is the City of Saskatoon's own information on its programs and services. Further, with regards to section 18(1)(c), I received insufficient evidence from the City of Saskatoon and from the Auditor to

satisfy the harms test of this exemption. I recommended that the draft audit report be released to the Applicant.

I further recommended that the City of Saskatoon become familiar with the Review Reports from this office available at www.oipc.sk.ca and our office's expectation of what is required to meet the statutory burden of proof in order to rely on an exemption and deny a citizen access to records.

In response, the City of Saskatoon advised it would not release the draft Audit Report and contended that the second recommendation made is "outside of the Commissioner's jurisdiction."

Review Report LA-2011–003

(City of Saskatoon)

I released the above noted Review Report on November 21, 2011. The Applicant had applied to the City of Saskatoon for certain documents. The City of Saskatoon released some responsive records but withheld others citing section 15(1)(b)(i) of LA FOIP as its authority. The City of Saskatoon asserted that it had a right to withhold the records in question as the content had been dealt by its Executive Committee during in camera sessions. I found that the City of Saskatoon did not meet the burden of proof and recommended release of all withheld records.

The response from the City of Saskatoon was received on November 29, 2011. The City of Saskatoon advised us as follows:

> We do not agree with the Commissioner's interpretation of burden of proof. We believe that this section of the Act merely refers to the fact that it is the head, rather than the applicant, who has the burden of establishing that access to the record 'may or must be refused or granted.' We do not believe that the Act requires that the head must provide the Commissioner with the level of "proof" that he is demanding. There is also a practical matter for the City of Saskatoon. If the City of Saskatoon accepted the Commissioner's interpretation as it to the level of proof, at least one, if not two, additional staff would be necessary.
>
> Having said that, we do accept that the City of Saskatoon's responses to very early review files such as this were not satisfactory. We did not send properly-indexed documents to OIPC, and did not provide the level of background

information that we now provide in order to explain our reasons for withholding the records. In this case we did not provide a full explanation as to what the Executive Committee is, under what authority it operates, and its membership. This information has been provided to the OIPC for subsequent review files; however it was not considered in this case.

The City of Saskatoon went on further to state that though it believes that the documents were properly withheld at the time, now with the passage of time there is no longer reason to withhold them apart from any personal information of third parties contained within those records. However, as the Applicant is deceased, there is no possible way to release records to him.

Review Report LA-2011-004

(City of Saskatoon)

I issued this Review Report on November 21, 2011. It involved an Applicant seeking documents withheld by the City of Saskatoon pursuant to sections 16(1)(a) and 16(1)(b) of LA FOIP. The City of Saskatoon asserted that it had a right to withhold the records in question as they contained advice, proposals, recommendations, analyses or policy options for the City of Saskatoon; and consultations or deliberations involving employees of the City of Saskatoon. The documents pertained to the Destination Centre Steering Committee and included meeting minutes and e-mails. The City of Saskatoon failed to provide sufficient information to meet its burden of proof in establishing that the exemptions in sections 16(1)(a) and 16(1)(b) applied to the records in issue. I therefore recommended that the City of Saskatoon release the documents.

The City of Saskatoon responded by way of letter dated November 24, 2011. In its response to the recommendation regarding the application of section 16, it stated that "[w]e believe that the Commissioner's interpretation is wrong at law." In the City of Saskatoon's view the exemption applied, however, if the Applicant had not been deceased it would now be willing to release. Further, the City of Saskatoon noted that it disagrees with "the Commissioner's interpretation of 'burden of proof.'"

Financial Statements

For the Year Ended March 31, 2012

Saskatchewan
Information and Privacy
Commissioner

503 - 1801 Hamilton Street
Regina, Saskatchewan
S4P 4B4

Tel: (306) 787-8350
Fax: (306) 798-1603
Website: www.oipc.sk.ca

June 11, 2012

2011 - 2012 MANAGEMENT REPORT

The accompanying financial statements are the responsibility of management and have been approved in principle by the Office of the Information and Privacy Commissioner. The financial statements have been prepared in accordance with Canadian generally accepted accounting principles.

Management maintains appropriate systems of internal control, including policies and procedures which provide reasonable assurance that the Office's assets are safeguarded and that financial records are relevant and reliable.

The Provincial Auditor of Saskatchewan conducts an independent audit of the financial statements. Her examination is conducted in accordance with Canadian generally accepted auditing standards and includes tests and other procedures which allow her to report on the fairness of the financial statements.

R. Gary Dickson, Q.C.
Saskatchewan Information and
Privacy Commissioner

Pam Scott
Director of Operations

PROVINCIAL AUDITOR
of Saskatchewan

INDEPENDENT AUDITOR'S REPORT

To: The Members of the Legislative Assembly of Saskatchewan

I have audited the accompanying financial statements of the Office of the Information and Privacy Commissioner, which comprise the statement of financial position as at March 31, 2012, and the statements of operations and accumulated surplus, changes in net assets and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian public sector accounting standards and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

In my opinion, the financial statements present fairly, in all material respects, the financial position of the Office of the Information and Privacy Commissioner as at March 31, 2012, and the results of its operations, changes in its net assets and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Regina, Saskatchewan
June 11, 2012

Bonnie Lysyk, MBA, CA
Provincial Auditor

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www.auditor.sk.ca

Office of the Information and Privacy Commissioner
Statement of Financial Position
As at March 31

	2012	2011
Financial assets		
Due from the General Revenue Fund	$ 51,002	$ 26,224
Liabilities		
Accounts payable	22,611	20,723
Accrued employee costs	28,391	5,501
	51,002	26,224
Net assets (Statement 3)	-	-
Non - financial assets		
Tangible capital assets (Note 3)	18,834	27,689
Prepaid expenses	17,823	1,983
	36,657	29,672
Accumulated surplus (Statement 2)	$ 36,657	$ 29,672

Contractual obligations (Note 8)

Statement 2

Office of the Information and Privacy Commissioner
Statement of Operations and Accumulated Surplus
Year Ended March 31

	2012 Budget (Note 4)	2012 Actual	2011 Actual
Revenues			
General Revenue Fund Appropriation	$ 1,174,000	$ 1,128,657	$ 956,981
Expenses			
Salaries and other employment expenses	872,000	811,778	719,462
Administration and operating expenses	60,050	52,577	55,452
Rental of space and equipment	139,300	140,668	126,454
Travel	27,150	34,604	18,594
Advertising and promotion	6,600	10,618	3,974
Amortization	-	17,752	17,903
Contractual and legal services	68,900	53,675	35,916
Total Expense	1,174,000	1,121,672	977,755
Annual surplus (deficit)	$ -	6,985	(20,774)
Accumulated surplus, beginning of year		29,672	50,446
Accumulated surplus, end of year (Statement 1)		$ 36,657	$ 29,672

Office of the Information and Privacy Commissioner
Statement of Changes in Net Assets
Year Ended March 31

	2012	2011
Annual surplus (deficit)	$ 6,985	$ (20,774)
Acquisition of tangible capital assets	(8,897)	(3,835)
Amortization of tangible capital assets	17,752	17,903
	8,855	14,068
(Increase) decrease in prepaid expense	(15,840)	6,706
	(6,985)	20,774
Decrease (increase) in net assets	-	-
Net assets, beginning of year	-	-
Net assets, end of year (Statement 1)	$ -	$ -

Statement 4

Office of the Information and Privacy Commissioner
Statement of Cash Flows
Year Ended March 31

Cash flows from (used in) operating activities:	**2012**	**2011**
General Revenue Fund appropriation received	$ 1,103,878	$ 947,914
Salaries paid	(788,887)	(714,398)
Supplies and other expenses paid	(306,094)	(229,681)
Cash provided from operating activities	8,897	3,835
Cash flows from (used in) in investing activities:		
Purchase of tangible capital assets	(8,897)	(3,835)
Increase (decrease) in cash and cash equivalents	-	-
Cash and cash equivalents, beginning of year	-	-
Cash and cash equivalents, end of year	$ -	$ -

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
MARCH 31, 2012

1. Authority and description of operations

The Freedom of Information and Protection of Privacy Act (Act) states that the Lieutenant Governor in Council, on the recommendation of the Assembly, shall appoint an Information and Privacy Commissioner. The Commissioner is an officer of the Legislative Assembly and is appointed by resolution. The mandate of the Office of the Information and Privacy Commissioner (Office) is to review Government decisions under the Act to ensure the protection of the public's right to access records held or controlled by the Government and to ensure that personal information is only collected, used and disclosed according to the manner and purposes set out in the Act.

2. Summary of accounting policies

The Office uses Canadian public sector accounting standards to prepare its financial statements. The following accounting policies are considered to be significant.

a) Revenue

The Office receives an appropriation from the Legislative Assembly to carry out its work. General Revenue Fund appropriations are included in revenue when amounts are spent or committed. The Office's expenditures are limited to the amount appropriated to it by the Legislative Assembly.

b) Tangible capital assets

Tangible capital assets are reported at cost less accumulated amortization. Tangible capital assets are amortized on a straight-line basis over a life of three to five years.

3. Tangible capital assets

	2012				2011
	Hardware & Software	Furniture	Leasehold Improvement	Total	Total
Opening costs	$ 81,264	$ 129,766	$ 43,852	$ 254,882	$ 251,047
Additions	6,718	2,179	---	8,897	3,835
Disposals	---	---	---	---	---
Closing costs	87,982	131,945	43,852	263,779	254,882
Opening accumulated amortization	70,300	113,041	43,852	227,193	209,290
Annual amortization	7,651	10,101	---	17,752	17,903
Closing accumulated amortization	77,951	123,142	43,852	244,945	227,193
Net book value of tangible capital assets	$ 10,031	$ 8,803	$ ---	$ 18,834	$ 27,689

4. Budget

These amounts represent funds appropriated by the Board of Internal Economy to enable the Office to carry out its duties under *The Freedom of Information and Protection of Privacy Act*.

The amount appropriated for the year was $1,114,000. During the year additional funding was approved by one Special Warrant to provide for unanticipated costs associated with staffing-related expenses. On January 19th, 2012 $60,000 in Special Warrant funding was approved by Order in Council #12/2012.

5. Costs borne by other agencies

The Office has not been charged with certain administrative costs. These costs are borne by the Legislative Assembly. No provision for these costs is reflected in these financial statements.

6. Lapsing of appropriation

The Office follows *The Financial Administration Act, 1993* with regards to its spending. If the Office spends less than its appropriation by March 31, the difference is not available to acquire goods and services in the next fiscal year.

7. Financial Instruments

The Office's financial instruments include Due from the General Revenue Fund, Accounts payable and Accrued employee payables. The carrying amount of these instruments approximates fair value due to their immediate or short-term maturity. These instruments have no significant interest rate and credit risk.

8. Contractual Obligations

During the year ended March 31, 2011, the Office and its landlord made a new lease whereby the Office agreed to rent the premises for five years commencing June 30, 2010. Annual lease payments are $131,538 before escalation adjustments.

Appendices

Appendix 1
Definitions

The following is a list of definitions of terms or abbreviations used in the course of this document or referenced in documents accessible from the website: www.oipc.sk.ca.

Additional definitions are found in the three provincial statutes: *The Freedom of Information and Protection of Privacy Act* (FOIP), *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and *The Health Information Protection Act* (HIPA).

Applicant refers to an individual who has made an access request to a government institution, local authority, or health information trustee.

Access is the right of an individual (or his or her lawfully authorized representative) to view or obtain copies of records in the possession or control of a government institution, local authority or trustee including his/or her personal information/ personal health information.

Collection is defined by HIPA as to "gather, obtain access to, acquire, receive or obtain personal health information from any source by any means" (section 2(b) of HIPA).

Commissioner refers to the Saskatchewan Information and Privacy Commissioner.

Complainant refers to an aggrieved individual who makes a formal complaint to the Commissioner to investigate an alleged breach of privacy by that public body or trustee pursuant to sections 33 of FOIP, 32 of LA FOIP, or 52 of HIPA.

Complaint is written concern that there has been a breach of privacy by a government institution, local authority or trustee.

Confidentiality is the protection of personal information and personal health information once obtained against improper or unauthorized use or disclosure. This is just one aspect of privacy and is not synonymous with 'privacy'.

Control is a term used to indicate that the records in question are not in the physical possession of the public body or trustee, yet still within the influence of that body via another mechanism (e.g. contracted service).

Custody is the physical possession of a record by a public body or trustee.

Detailed Research and Commentary refers to requests for evaluative, general, non-binding advice that take in excess of one hour of research, most of these would involve in excess of four hours research.

Disclosure is sharing of personal information with a separate entity, not a division or branch of the public body or trustee in possession or control of that record/ information.

Duty to Assist means responding openly, accurately and completely to an individual requesting access to records in the possession or control of a government institution or local authority or to personal health information in the custody or control of a health information trustee.

Exclusions are prescribed records and organizations that are not subject to FOIP, LA FOIP or HIPA.

Exemptions are sections of the relevant statutes referenced to justify the denial of access to records by the individual either for mandatory or discretionary reasons.

FOIP refers to *The Freedom of Information and Protection of Privacy Act* that came into force in 1992.

FOIP Coordinator refers to an individual designated pursuant to section 60 of FOIP for managing access and privacy issues in any public body with this title.

FOIP Regime means the statute, regulations, as well as the policies, practices and procedures for the implementation of the statute and regulations.

Government Institution refers to those public bodies prescribed in FOIP and the FOIP Regulations and includes approximately 90 provincial government departments, agencies, and Crown corporations.

Head of a public body is the individual accountable by law for making the final decision on access requests, but may delegate these powers to someone else in the organization. This is typically the Minister of a ministry, the mayor of a municipality and the CEO of a local authority or Crown corporation.

HIPA refers to *The Health Information Protection Act* that came into force in 2003.

Identity Theft occurs when one person uses another's personal information without his/her knowledge or consent to commit a crime such as fraud or theft.

LA FOIP refers to *The Local Authority Freedom of Information and Protection of Privacy Act* that came into force in 1993.

Local Authorities means local government including library boards, municipalities, regional colleges, schools, universities, and regional health authorities as prescribed by LA FOIP and the LA FOIP Regulations.

Mediation is the process of facilitating discussion between the parties involved in a review or investigation by the OIPC with the goal of negotiating a mutually acceptable resolution to the dispute without the issuance of a formal report.

OIPC is an abbreviation for the Office of the Saskatchewan Information and Privacy Commissioner.

Personal Information is "recorded information about an identifiable individual" and includes details such as your name, address, phone number, SIN, race, driver's license number, health card number, credit ratings, and opinions of another person about you.

Personal Health Information includes information about your physical or mental health and/or information gathered in the course of providing health services for you.

PIA is an abbreviation for a Privacy Impact Assessment. A PIA is a diagnostic tool designed to help organizations assess their compliance with the privacy requirements of Saskatchewan legislation.

Privacy, in terms of 'information privacy,' means the right of the individual to determine when, how and to what extent he/she will share information about him/herself with others. Privacy captures both security and confidentiality of personal information/personal health information.

Privacy Breach happens when there is an unauthorized collection, use or disclosure of personal information/personal health information regardless of whether the information ends up in a third party's possession.

Public Bodies are organizations in the public sector including government institutions and local authorities.

Record is information in any form or format and includes such items as documents, maps, books, post-it notes, handwritten notes, phone messages, photographs, and tape recordings.

Report is a document prepared by the Saskatchewan Information and Privacy Commissioner that issues recommendations to a public body for changes and/or actions in response to the findings of a formal access review or breach of privacy complaint.

Research is the systematic investigation designed to develop or establish principles, facts or generalizable knowledge.

Review is the process by which the OIPC considers either a decision or failure of a trustee to provide an applicant with access to his or her PHI.

Secondary Purpose refers to the use or disclosure of personal information/personal health information for a purpose other than that for which it was originally collected.

Security refers to steps taken to protect personal information or personal health information from unauthorized disclosure.

Severing is the exercise by which portions of a document are blacked out pursuant to section 8 of FOIP, section 8 of LA FOIP or section 38(1) of HIPA before that document is provided to an applicant.

Summary advice refers to requests for information received from public bodies, trustees or the public that can be responded to with less than one hour of research.

Surrogate refers to someone other than the individual but who is exercising rights or powers under section 59 of FOIP, section 49 of LA FOIP or section 56 of HIPA on behalf of the individual.

Third Party is a person other than the applicant or a public body.

Trustees as defined within section 2(t) of HIPA are individuals and corporations who are part of Saskatchewan's health system in custody or control of personal health information and any government institution as defined by FOIP.

Use indicates the internal utilization of personal information by a public body and includes sharing of the personal information in such a way that it remains under the control of that public body.

Appendix 2
Sample List of Presentations

Made From April 1, 2011 to March 31, 2012

- Assistant Deputy Minister/Deputy Minster Orientation Session
- Canada Health Infoway Privacy Forum
- Canadian Bar Association - Privacy and Access Law Section meeting (Saskatchewan South)
- The Canadian Institute's Privacy and Compliance Conference (Toronto)
- City of Regina - Open Government Initiatives
- Kelsey Trail Regional Health Authority
- Network of Inter-professional Regulatory Organizations (NIRO)
- New MLA/Independent Officer Orientation
- Prince Albert Parkland Regional Health Authority
- Privacy and Security Awareness Expo (Ministry of Justice, Access and Privacy Branch)
- Regional Parks of Saskatchewan
- Saskatchewan Legislative Internship Program
- Saskatchewan Medical Association
- SIAST/University of Regina Nursing Program
- University of Regina, School of Journalism
- Weyburn Public Library
- Workers' Compensation Act Committee of Review
- 7th International Conference of Information Commissioners (Ottawa)

Appendix 3
List of Bodies Subject to OIPC Oversight

Government Institutions

- Ministries (21)
- Agencies, Boards and Commissions (40)
- Crown Corporations (18)

Local Authorities

- Libraries (500 +)
- Municipalities (786)
  - urban municipalities (466)
  - rural municipalities (296)
  - incorporated municipalities (24)
- Regional Colleges (7)
- Regional Health Authorities (13)
- School Divisions (28)
- SIAST (4 campuses)
- Universities (2)

Health Information Trustees

- Regional Health Authorities (13) and Affiliates
- Regulated Health Professions
  - includes physicians, surgeons and registered nurses
- Self-Regulating Health Professional Associations (27)
- Pharmacies
- Ambulance Operators
- Community Clinics
- Government Institutions
- Personal Care Homes
- Mental Health Facilities
- Laboratories
- Saskatchewan Cancer Agency